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# TEXAS REGISTER

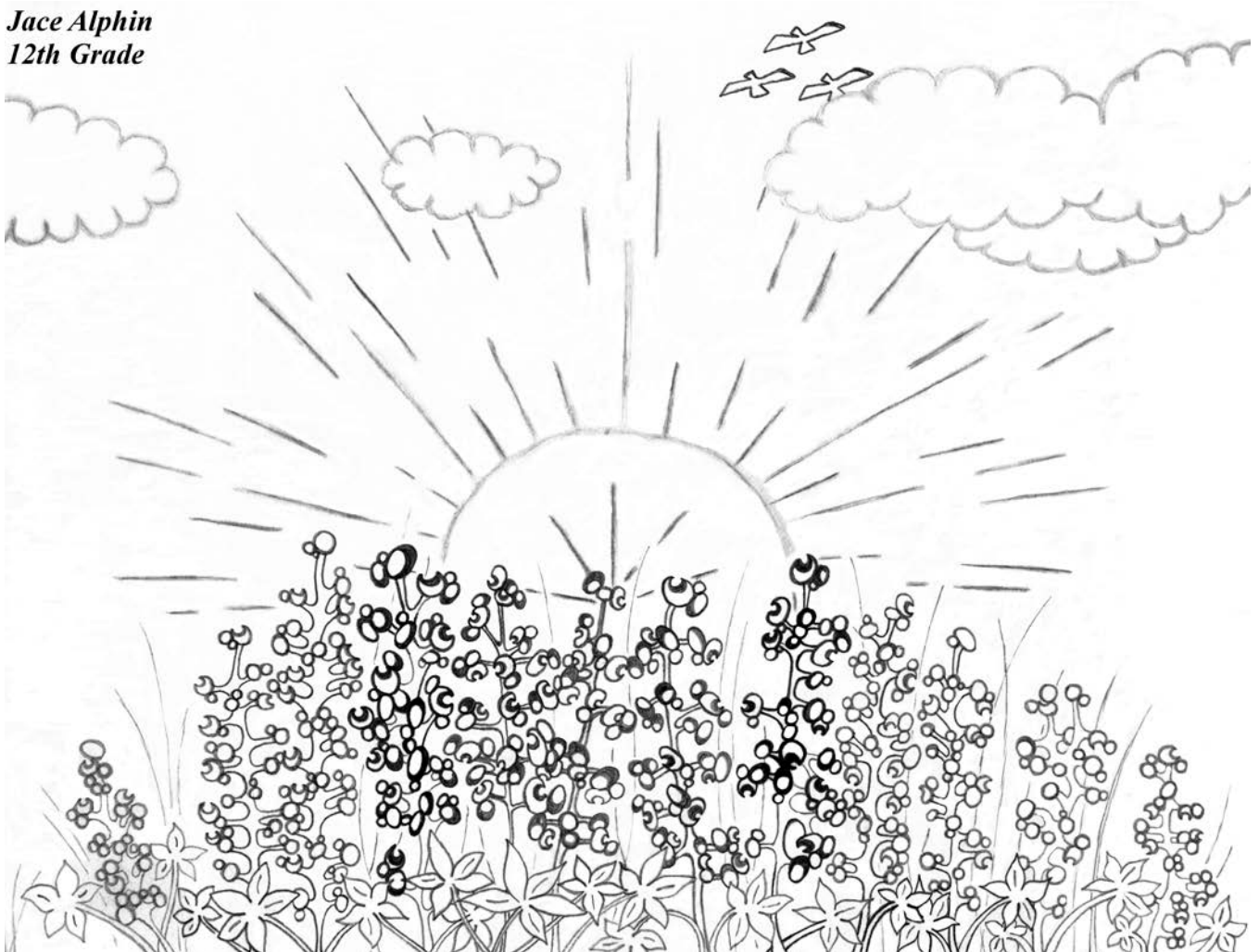
*Volume 38 Number 18*

*May 3, 2013*

*Pages 2713 - 2806*

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*Jace Alphin  
12th Grade*



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***Texas Register***, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

**POSTMASTER:** Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, TX 78711-3824  
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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/open/index.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.texas.gov>

...

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

## Requests for Opinions

### RQ-1121-GA

#### Requestor:

The Honorable Daphne Session

Houston County Attorney

401 East Houston Avenue, 2nd Floor

Crockett, Texas 75835

Re: The appropriate court for a surety to file a release of surety for the surrender of a bond principal (RQ-1121-GA)

#### Briefs requested by May 20, 2013

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-201301650

Katherine Cary

General Counsel

Office of the Attorney General

Filed: April 24, 2013



## Opinions

### Opinion No. GA-1000

The Honorable R. Scott McKee

173rd Judicial District Attorney

109 West Corsicana, Suite 103

Athens, Texas 75751

Re: Whether article 42.12, sec. 15(h) of the Code of Criminal Procedure, which authorizes a judge to award confined defendants time credit for participation in an educational, vocational or treatment program, violates the Texas Constitution (RQ-1094-GA)

## S U M M A R Y

A court would likely conclude that article 42.12, subsection 15(h)(6) of the Code of Criminal Procedure does not conflict with article IV, section 11 or article II, section 1 of the Texas Constitution.

### Opinion No. GA-1001

The Honorable Richard R. Hicks III

Caldwell County Criminal District Attorney

Caldwell County Courthouse

Post Office Box 869

Lockhart, Texas 78644

Re: Whether a commissioners court may change the designated day of the week it convenes during the current fiscal year under section 81.005 of the Local Government Code (RQ-1095-GA)

## S U M M A R Y

Pursuant to subsection 81.005(h) of the Local Government Code, a county commissioners court may change the designated day of the week it convenes during the county's current fiscal year.

A county commissioners court that tables the designation of the regular meeting day until the next fiscal year is not in compliance with subsection 81.005(a) of the Local Government Code. It is however unlikely that a reviewing court would invalidate such an order.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-201301624

Katherine Cary

General Counsel

Office of the Attorney General

Filed: April 23, 2013



# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER A. COST DETERMINATION PROCESS

##### 1 TAC §355.105

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.105, concerning General Reporting and Documentation Requirements, Methods, and Procedures.

##### Background and Justification

HHSC, under its authority and responsibility to administer and implement rates, proposes to amend this rule to: 1) clarify limitations on reporting related-party compensation on Medicaid cost reports; 2) incorporate changes to reflect person first respectful language; and 3) clarify the references in subsection (a).

HHSC limits the reporting of compensation for owners and related-party administrators and assistant administrators to ensure that only reasonable and necessary costs are included in Texas Medicaid cost reports. In this context, a related party is generally defined as any person or organization related to the provider by blood, marriage, common ownership, or control. Language in §355.105(i) currently indicates that these limitations apply only to related-party salaries, wages, payroll taxes, and benefits. HHSC proposes to amend subsection (i) to clarify that it applies not just to salaries, wages, and benefits, but to all related-party compensation including related-party contracted labor. This change in the rule language will clarify that these limitations apply to related-party administrators and assistant administrators who work as contract labor, as well as those who are direct employees of the provider.

In addition, HHSC proposes amending §355.105 to incorporate person first respectful language in compliance with Texas Government Code §392.002.

##### Section-by-Section Summary

HHSC proposes amendments to §355.105 as follows:

Modify subsection (a) to clarify that HHSC determines the costs appropriate for use in calculating reimbursement using the requirements, methods, and procedures set forth in the entire section.

Modify subsection (i) to change references to the terms "salaries," "wages," and "benefits" to the term "compensation."

Make revisions throughout the section to replace the name of the predecessor to the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions program and to replace words that are not considered person first respectful with more respectful wording.

##### Fiscal Note

James Jenkins, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amendment is in effect there will be no fiscal impact to state government. The amendment will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the amendment.

Mr. Jenkins anticipates there will be no economic cost to persons who are required to comply with the proposed amendment during the first five years the rule will be in effect. The amendment should not affect local employment.

##### Small Business and Micro-business Impact Examination

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The proposed amendment does not require any changes in practice or any additional cost to a contracted provider.

##### Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that, for each of the first five years the amendment is in effect, the expected public benefit is that the rule will clarify how limitations on the reporting of compensation for owners and related-party administrators and assistant administrators are determined and will incorporate person first respectful language.

##### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

##### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This



proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Public Comment

Questions about the content of this proposal may be directed to Brian King in the HHSC Rate Analysis Department by telephone at (512) 491-1369. Written comments on the proposal may be submitted to Mr. King by fax to (512) 491-1998; by e-mail to [brian.king@hhsc.state.tx.us](mailto:brian.king@hhsc.state.tx.us) or by mail to HHSC Rate Analysis, Mail Code H400, P.O. Box 85200, Austin, Texas 78708-5200 within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b)(2), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The amendment affects Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

#### *§355.105. General Reporting and Documentation Requirements, Methods, and Procedures.*

(a) General reporting. Except where otherwise specified under this title, the Texas Health and Human Services Commission (HHSC) follows the requirements, methods, and procedures set forth in ~~subsections (b) - (h) of~~ this section to determine costs appropriate for use in the reimbursement determination process.

(b) Cost report requirements. Unless specifically stated in program rules or excused as described in paragraph (4)(D) of this subsection, each provider must submit financial and statistical information on cost report forms provided by HHSC, or on facsimiles that are formatted according to HHSC specifications and are pre-approved by HHSC staff, or electronically in HHSC-prescribed format in programs where these systems are operational. The cost reports must be submitted to HHSC in a manner prescribed by HHSC. The cost reports must be prepared to reflect the activities of the provider while delivering contracted services during the fiscal year specified by the cost report. Cost reports or other special surveys or reports may be required for other periods at the discretion of HHSC. Each provider is responsible for accurately completing any cost report or other special survey or report submitted to HHSC.

(1) Accounting methods. All financial and statistical information submitted on cost reports must be based upon the accrual method of accounting, except where otherwise specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs) and in the case of governmental entities operating on a cash or modified accrual basis. For cost-reporting purposes, accrued expenses must be incurred during the cost reporting period and must be paid within 180 days after the end of that cost reporting period. In situations where a contracted provider, any of its controlling entities, its parent company/sole member, or its related-party management company has filed for bankruptcy protection, the contracted provider may request an exception to the 180-day requirement for payment of accrued allowable expenses by submitting a written request to the HHSC Rate Analysis Department. The written request must be submitted

within 60 days of the date of the bankruptcy filing or at least 60 days prior to the due date of the cost report for which the exception is being requested, whichever is later. The contracted provider will then be requested by the HHSC Rate Analysis Department to provide certain documentation, which must be provided by the specified due date. Such exceptions due to bankruptcy may be granted for reasonable, necessary and documented accrued allowable expenses that were not paid within the 180-day requirement. Accrued revenues must be for services performed during the cost reporting period and do not have to be received within 180 days after the end of that cost reporting period in order to be reported as revenues for cost-reporting purposes. Except as otherwise specified by the cost determination process rules of this chapter, cost report instructions, or policy clarifications, cost reports should be prepared consistent with generally accepted accounting principles (GAAP), which are those principles approved by the American Institute of Certified Public Accountants (AICPA). Internal Revenue Service (IRS) laws and regulations do not necessarily apply in the preparation of the cost report. In cases where cost reporting rules differ from GAAP, IRS, or other authorities, HHSC rules take precedence for provider cost-reporting purposes.

(2) Recordkeeping and adequate documentation. There is a distinction between noncompliance in recordkeeping, which equates with unauditability of a cost report and constitutes an administrative contract violation or, for the Nursing Facility program, may result in vendor hold, and a provider's inability to provide adequate documentation, which results in disallowance of relevant costs. Each is discussed in the following paragraphs.

(A) Recordkeeping. Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and other statistical information contained in the cost report. Providers must maintain all workpapers and any other records that support the information submitted on the cost report relating to all allocations, cost centers, cost or statistical line items, surveys, and schedules. HHSC may require supporting documentation other than that contained in the cost report to substantiate reported information.

(i) For Texas Department of Aging and Disability Services (DADS)-contracted providers, each provider must maintain records according to the requirements stated in 40 TAC §69.158 (relating to How long must contractors, subrecipients, and subcontractors keep contract-related records?) and according to the HHSC's prescribed chart of accounts, when available.

(ii) If a contractor is terminating business operations, the contractor must ensure that:

(I) records are stored and accessible; and

(II) someone is responsible for adequately maintaining the records.

(iii) For nursing facilities, failure to maintain all workpapers and any other records that support the information submitted on the cost report relating to all allocations, cost centers, cost or statistical line items, surveys and schedules may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

(iv) For all other programs, failure to maintain all workpapers and any other records that support the information submitted on the cost report relating to all allocations, cost centers, cost or statistical line items, surveys and schedules constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations).

(B) Adequate documentation. To be allowable, the relationship between reported costs and contracted services must be clearly and adequately documented. Adequate documentation consists of all materials necessary to demonstrate the relationship of personnel, supplies, and services to the provision of contracted client care or the relationship of the central office to the individual service delivery entity level. These materials may include, but are not limited to, accounting records, invoices, organizational charts, functional job descriptions, other written statements, and direct interviews with staff, as deemed necessary by HHSC auditors to perform required tests of reasonableness, necessity, and allowability.

(i) The minimum allowable statistical duration for a time study upon which to base salary allocations is four weeks per year, with one week being randomly selected from each quarter so as to assure that the time study is representative of the various cycles of business operations. One week is defined as only those days the contracted provider is in operation during seven continuous days. The time study can be performed for one continuous week during a quarter, or it can be performed over five or seven individual days, whichever is applicable, throughout a quarter. The time study must be a 100% time study, accounting for 100% of the time paid the employee, including vacation and sick leave.

(ii) To support the existence of a loan, the provider must have available a signed copy of the loan contract which contains the pertinent terms of the loan, such as amount, rate of interest, method of payment, due date, and collateral. The documentation must include an explanation for the purpose of the loan and an audit trail must be provided showing the use of the loan proceeds. Evidence of systematic interest and principal payments must be available and supported by the payback schedule in the note or amortization schedule supporting the note. Documentation must also include substantiation of any costs associated with the securing of the loan, such as broker's fees, due diligence fees, lender's fees, attorney's fees, etc. To document allowable interest costs associated with related party loans, the provider is required to maintain documentation verifying the prime interest rate in accordance with §355.103(b)(8)(C) of this title for a similar type of loan as of the effective date of the related party loan.

(iii) For ground transportation equipment, a mileage log is not required if the equipment is used solely (100%) for provision of contracted client services in accordance with program requirements in delivering one type of contracted care. However, the contracted provider must have a written policy that states that the ground transportation equipment is restricted to that use and that policy must be followed. For ground transportation equipment that is used for several purposes (including for personal use) or multiple programs or across various business components, mileage logs must be maintained. Personal use includes, among other things, driving to and from a personal residence. At a minimum, mileage logs must include for each individual trip the date, the time of day (beginning and ending), driver, persons in the vehicle, trip mileage (beginning, ending, and total), purpose of the trip, and the allocation centers (the departments, programs, and/or business entities to which the trip costs should be allocated). Flight logs must include dates, mileage, passenger lists, and destinations, along with any other information demonstrating the purpose of the trips so that a relationship to contracted client care in Texas can be determined. For the purpose of comparison to the cost of commercial alternatives, documentation of the cost of operating and maintaining a private aircraft includes allowable expenses relating to the lease or depreciation of the aircraft; aircraft fuel and maintenance expenses; aircraft insurance, taxes, and interest; pilot expenses; hangar and other related expenses; mileage, vehicle rental or other ground transportation expense; and airport parking fees. Documentation demonstrating the allowable cost of commercial alternatives includes commercial airfare

ticket costs at lowest fare offered (including all discounts) and associated expenses including mileage, vehicle rental or other ground transportation expense; airport parking fees; and any hotel or per diem due to necessary layovers (no scheduled flights at time of return trip).

(iv) To substantiate the allowable cost of leasing a luxury vehicle as defined in §355.103(b)(7)(C)(i) of this title, the provider must obtain at the time of the lease a separate quotation establishing the monthly lease costs for the base amount allowable for cost-reporting purposes as specified in §355.103(b)(7)(C)(i) of this title. Without adequate documentation to verify the allowable lease costs of the luxury vehicle, the reported costs shall be disallowed.

(v) For adequate documentation purposes, a written description of each cost allocation method must be maintained that includes, at a minimum, a clear and understandable explanation of the numerator and denominator of the allocation ratio described in words and in numbers, as well as a written explanation of how and to which specific business components the remaining percentage of costs were allocated.

(vi) To substantiate the allowable cost for staff training as defined in §355.103(b)(12)(A) of this title, the provider must maintain a description of the training verifying that the training pertained to contracted client care-related services or quality assurance. At a minimum, a program brochure describing the seminar or a conference program with description of the workshop must be maintained. The documentation must provide a description clearly demonstrating that the seminar or workshop provided training pertaining to contracted client care-related services or quality assurance.

(vii) Documentation regarding the allocation of costs related to noncontracted services, as specified in §355.102(j)(2) of this title, must be maintained by the provider. At a minimum, the provider must maintain written records verifying the number of units of noncontracted services provided during the provider's fiscal year, along with adequate documentation supporting the direct and allocated costs associated with those noncontracted services.

(viii) Adequate documentation to substantiate legal, accounting, and auditing fees must include, at a minimum, the amount of time spent on the activity, a written description of the activity performed which clearly explains to which business component the cost should be allocated, the person performing the activity, and the hourly billing amount of the person performing the activity. Other legal, accounting, and auditing costs, such as photocopy costs, telephone costs, court costs, mailing costs, expert witness costs, travel costs, and court reporter costs, must be itemized and clearly denote to which business component the cost should be allocated.

(ix) Providers who self insure for all or part of their employee-related insurance costs, such as health insurance and workers' compensation costs, must use one of the two following methods for determining and documenting the provider's allowable costs under the cost ceilings and any carry forward as described in §355.103(b)(10)(E) of this title.

(I) Providers may obtain and maintain each fiscal year's documentation to establish what their premium costs would have been had they purchased commercial insurance for total coverage. The documentation should include, at a minimum, bids from two commercial carriers. Bids must be obtained no less frequently than every three years.

(II) If providers choose not to obtain and maintain commercial bids as described in subclause (I) of this clause, providers may claim as an allowable cost the health insurance actual paid claims incurred on behalf of the employees that does not exceed

10% of the payroll for employees eligible for receipt of this benefit. In addition, providers may claim as an allowable cost the workers' compensation actual paid claims incurred on behalf of the employees, an amount each cost report period not to exceed 10% of the payroll for employees eligible for receipt of this benefit.

(III) Providers who self insure must also maintain documentation that supports the amount of claims paid each year and any allowable costs to be carried forward to future cost-reporting periods.

(x) Providers who self insure for all or part of their coverage for nonemployee-related insurance, such as malpractice insurance, comprehensive general liability, and property insurance, must maintain documentation for each cost-reporting period to establish what their premium costs would have been had they purchased commercial insurance for total coverage. The documentation should include, at a minimum, bids from two commercial carriers. Bids must be obtained no less frequently than every three years. Providers who self insure must also maintain documentation that supports the amount of claims paid each year and any allowable costs to be carried forward to future cost-reporting periods. Governmental providers must document the existence of their claims management and risk management programs.

(xi) Regarding compensation of owners and related parties, providers must maintain the following documentation, at a minimum, for each owner or related party: a detailed written description of actual duties, functions, and responsibilities; documentation substantiating that the services performed are not duplicative of services performed by other employees; time sheets or other documentation verifying the hours and days worked; the amount of total compensation paid for these duties, with a breakdown detailing regular salary, overtime, bonuses, benefits, and other payments; documentation of regular, periodic payments and/or accruals of the compensation, documentation that the compensation is subject to payroll or self-employment taxes; and a detailed allocation worksheet indicating how the total compensation was allocated across business components receiving the benefit of these duties.

(I) Regarding bonuses paid to owners and related parties, the provider must maintain clearly defined bonus policies in its written agreements with employees or in its overall employment policy. At a minimum, the bonus policy must include the basis for distributing the bonuses including qualifications for receiving the bonus, and how the amount of each bonus is calculated. Other documentation must specify who received bonuses, whether the persons receiving bonuses are owners, related parties, or arm's-length employees, and the bonus amount received by each individual.

(II) Regarding benefits provided to owners and related parties, the provider must maintain clearly defined benefit policies in its written agreements with employees or in its overall employment policy. At a minimum, the documentation must include the basis for eligibility for each type of benefit available, who is eligible to receive each type of benefit, who actually receives each type of benefit, whether the persons receiving each type of benefit are owners, related parties, or arm's-length employees, and the amount of each benefit received by each individual.

(xii) Regarding all forms of compensation, providers must maintain documentation for each employee which clearly identifies each compensation component, including regular pay, overtime pay, incentive pay, mileage reimbursements, bonuses, sick leave, vacation, other paid leave, deferred compensation, retirement contributions, provider-paid instructional courses, health insurance, disability insurance, life insurance, and any other form

of compensation. Types of documentation would include insurance policies; provider benefit policies; records showing paid leave accrued and taken; documentation to support hours (regular and overtime) worked and wages paid; and mileage logs or other documentation to support mileage reimbursements and travel allowances. For accrued benefits, the documentation must clearly identify the period of the accrual. For example, if an employee accrues two weeks of vacation during 20x1 and receives the corresponding vacation pay during 20x3, that employee's compensation documentation for 20x3 should clearly indicate that the vacation pay received had been accrued during 20x1.

(I) For staff required to maintain continuous daily time sheets as per §355.102(j) of this title and subclause (II) of this clause, the daily timesheet must document, for each day, the staff member's start time, stop time, total hours worked, and the actual time worked (in increments of 30 minutes or less) providing direct services for the provider, the actual time worked performing other functions, and paid time off. The employee must sign each timesheet. The employee's supervisor must sign the timesheets each payroll period or at least monthly. Work schedules are unacceptable documentation for staff whose duties include multiple direct service types, both direct and indirect service component types, and both direct hands-on support and first level supervision of direct care workers.

(II) For the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) [Persons with Mental Retardation (ICF/MR)], Home and Community-based Services (HCS) and Texas Home Living (TxHmL) programs, staff required to maintain continuous daily timesheets include staff whose duties include multiple direct service types, both direct and indirect service component types and/or both direct hands-on support and first-level supervision of direct care workers.

(xiii) Management fees paid to related parties must be documented as to the actual costs of the related party for materials, supplies, and services provided to the individual provider, and upon which the management fees were based. If the cost to the related party includes owner compensation or compensation to related parties, documentation guidelines for those costs are specified in clause (xi) of this subparagraph. Documentation must be maintained that indicates stated objectives, periodic assessment of those objectives, and evaluation of the progress toward those objectives.

(xiv) For central office and/or home office costs, documentation must be maintained that indicates the organization of the business entity, including position, titles, functions, and compensation. For multi-state organizations, documentation must be maintained that clearly defines the relationship of costs associated with any level of management above the individual Texas contracted entity which are allocated to the individual Texas contracted entity.

(xv) Documentation regarding depreciable assets includes, at a minimum, historical cost, date of purchase, depreciable basis, estimated useful life, accumulated depreciation, and the calculation of gains and losses upon disposal.

(xvi) Providers must maintain documentation clearly itemizing their employee relations expenditures. For employee entertainment expenses, documentation must show the names of all persons participating, along with classification of the person attending, such as employee, nonemployee, owner, family of employee, client, or vendor.

(xvii) Adequate documentation substantiating the offsetting of grants and contracts from federal, state, or local governments prior to reporting either the net expenses or net revenue must be maintained by the provider. As specified in §355.103(b)(15) of this title, such offsetting is required prior to reporting on the cost report.

The provider must maintain written documentation as to the purpose for which the restricted revenue was received and the offsetting of the restricted revenue against the allowable and unallowable costs for which the restricted revenue was used.

(xviii) During the course of an audit or an audit desk review, the provider must furnish any reasonable documentation requested by HHSC auditors within ten working days of the request or a later date as specified by the auditors. If the provider does not present the requested material within the specified time, the audit or audit desk review is closed, and HHSC automatically disallows the costs in question.

(xix) Any expense that cannot be adequately documented or substantiated is disallowed. HHSC is not responsible for the contracted provider's failure to adequately document and substantiate reported costs.

(xx) Any cost report that is determined unauditable through a field audit or that cannot have its costs verified through a desk review will not be used in the reimbursement determination process.

(3) Cost report and methodology certification. Providers must certify the accuracy of cost reports submitted to HHSC in the format specified by HHSC. Providers may be liable for civil and/or criminal penalties if the cost report is not completed according to HHSC requirements or is determined to contain misrepresented or falsified information. Cost report preparers must certify that they read the cost determination process rules, the reimbursement methodology rules, the cost report cover letter and cost report instructions, and that they understand that the cost report must be prepared in accordance with the cost determination process rules, the reimbursement methodology rules and cost report instructions. Not all persons who contributed to the completion of the cost report must sign the certification page. However, the certification page must be signed by a responsible party with direct knowledge of the preparation of the cost report. A person with supervisory authority over the preparation of the cost report who reviewed the completed cost report may sign a certification page in addition to the actual preparer.

(4) Requirements for cost report completion.

(A) A completed cost report must:

(i) be completed according to the cost determination rules of this chapter, program-specific allowable and unallowable rules, cost report instructions, and policy clarifications;

(ii) contain a signed, notarized, original certification page or an electronic equivalent where such equivalents are specifically allowed under HHSC policies and procedures;

(iii) be legible with entries in sufficiently dark print to be photocopied;

(iv) contain all pages and schedules;

(v) be submitted on the proper cost report form;

(vi) be completed using the correct cost reporting period;

(vii) contain a copy of the state-issued cost report training certificate except for cost reports submitted through the State of Texas Automated Information and Reporting System (STAIRS); and

(viii) if applicable, be submitted with the correct Consolidated Reporting Group Number as described in subsection (c)(3) of this section.

(B) Providers are required to report amounts on the appropriate line items of the cost report pursuant to guidelines established

in the methodology rules, cost report instructions, or policy clarifications. Refer to program-specific reimbursement methodology rules, cost report instructions, or policy clarifications for guidelines used to determine placement of amounts on cost report line items.

(i) For nursing facilities, placement on the cost report of an amount, which was determined to be inaccurately placed, may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

(ii) For School Health and Related Services (SHARS), placement on the cost report of an amount, which was determined to be inaccurately placed, may result in an administrative contract violation as specified in §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS)).

(iii) For all other programs, placement on the cost report of an amount, which was determined to be inaccurately placed, constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(C) A completed cost report must be filed by the cost report due date.

(i) For nursing facilities, failure to file a completed cost report by the cost report due date may result in vendor hold as specified in §355.403 of this title.

(ii) For SHARS, failure to file a completed cost report by the cost report due date constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.8443 of this title.

(iii) For all other programs, failure to file a completed cost report by the cost report due date constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(D) HHSC may excuse providers from the requirement to submit a cost report. A provider that is not enrolled in Attendant Compensation Rate Enhancement as described in §355.112 of this title (relating to Attendant Compensation Rate Enhancement) for a specific program or the Nursing Facility Direct Care Staff Rate enhancement as described in §355.308 of this title (relating to Direct Care Staff Rate Component) during the reporting period for the cost report in question, is excused from the requirement to submit a cost report for such program if the provider meets one or more of the following conditions:

(i) For all programs, if the provider performed no billable services during the provider's cost-reporting period.

(ii) For all programs, if the cost-reporting period would be less than or equal to 30 calendar days or one entire calendar month.

(iii) For all programs, if circumstances beyond the provider's control, such as the loss of records due to natural disasters or removal of records from the provider's custody by a regulatory agency, make cost-report completion impossible.

(iv) For all programs, if all of the contracts that the provider is required to include in the cost report have been terminated before the cost-report due date.

(v) For the Nursing Facility, ICF/IID [ICF/MR], Assisted Living/Residential Care (AL/RC), and Residential Care (RC)

programs, if the total number of days that the provider performed service for HHSC or DADS recipients during the cost-reporting period is less than the total number of calendar days included in the cost-reporting period.

(vi) For the Day Activity and Health Services (DAHS) program, if the provider's total units of service provided to HHSC or DADS recipients during the cost-reporting period is less than the total number of calendar days included in the cost-reporting period times 1.5.

(vii) For the Home-Delivered Meals program, if a provider agency served an average of fewer than 500 meals a month for the designated cost report period.

(viii) For the Department of Family and Protective Services (DFPS) 24-Hour Residential Child-Care program, if:

(I) the contract was not renewed;

(II) only Basic Level services were provided;

(III) the total number of state-placed days (DFPS days and other state agency days) was 10 percent or less of the total days of service provided during the cost-reporting period;

(IV) the total number of DFPS-placed days was 10 percent or less of the total days of service provided during the cost-reporting period;

(V) for facilities that provide Emergency Care Services only, the occupancy rate was less than 30 percent during the cost-reporting period; or

(VI) for all other facility types except child-placing agencies and those providing Emergency Care Services, the occupancy rate was less than 50 percent during the cost-reporting period.

(5) Cost report year. A provider's cost report year must coincide with the provider's fiscal year as used by the provider for reports to the Internal Revenue Service (IRS) or with the state of Texas' fiscal year, which begins September 1 and ends August 31.

(A) Providers whose cost report year coincides with their IRS fiscal year are responsible for reporting to HHSC Rate Analysis any change in their IRS fiscal year and subsequent cost report year by submitting written notification of the change to HHSC Rate Analysis along with supportive IRS documentation. HHSC Rate Analysis must be notified of the provider's change in IRS fiscal year no later than 30 days following the provider's receipt of approval of the change from the IRS.

(B) Providers who chose to change their cost report year from their IRS fiscal year to the state fiscal year or from the state fiscal year to their IRS fiscal year must submit a written request to HHSC Rate Analysis by August 1 of state fiscal year in question.

(6) Failure to report allowable costs. HHSC is not responsible for the contracted provider's failure to report allowable costs, however any omitted costs which are identified during the desk review or audit process will be included in the cost report or brought to the attention of the provider to correct by submitting an amended cost report.

(c) Cost report due date.

(1) Providers must submit cost reports to HHSC Rate Analysis no later than 90 days following the end of the provider entity's fiscal year or 90 days from the transmittal date of the cost report forms, whichever due date is later.

(2) For SHARS, providers must submit cost reports to HHSC Rate Analysis as specified in §355.8443 of this title.

(3) For Primary Home Care (PHC), Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA), CLASS--Case Management Agency (CMA), and Community Based Alternatives (CBA)--Home and Community Support Services (HCSS), if a provider's legal entity controls more than one contract within a single program, the provider must submit a separate Consolidated Cost Reporting Schedule for each legal entity for each program.

(A) HHSC sends the Consolidated Cost Reporting Schedule to the provider for completion. The provider must complete and return the completed Consolidated Cost Reporting Schedule to HHSC Rate Analysis no later than 30 days after the end of the provider entity's fiscal year or 30 days after HHSC's transmittal date of the schedule to the provider, whichever due date is later.

(B) Upon receipt of the provider's completed Consolidated Cost Reporting Schedule, HHSC Rate Analysis will determine, and notify the provider of, the provider's Consolidated Reporting Group Number(s) as well as a list of the contract numbers associated with the Consolidated Reporting Group Number(s) for use in completing the provider's cost report(s).

(C) Providers in the programs named in this paragraph must submit cost reports to HHSC Rate Analysis no later than 120 days after the end of the provider entity's fiscal year or 120 days after HHSC's transmittal date of the Consolidated Cost Reporting Schedule to the provider for completion, whichever due date is later.

(D) Failure on the provider's part to submit a Consolidated Cost Reporting Schedule timely is not a good cause for failure to submit cost reports by the cost report due date specified in this paragraph.

(4) HHSC may grant extensions of due dates for good cause. A good cause is defined as a circumstance which the provider could not reasonably be expected to control and for which adequate advance planning and organization would not have been of any assistance. Providers must submit requests for extensions in writing to HHSC Rate Analysis. Requests for extensions must be received by HHSC Rate Analysis prior to the cost report due date. HHSC staff will respond in writing to requests within 15 days of receipt.

(5) HHSC may require additional financial and other statistical information, in the form of special surveys or reports, to ensure the fiscal integrity of the program. Providers must submit such additional information and/or special surveys or reports to HHSC Rate Analysis upon request by the date specified by HHSC Rate Analysis in its transmittal or cover letter to the special survey, report, or request for additional information.

(d) Amended cost report due dates. HHSC accepts submittal of provider-initiated or HHSC-requested amended cost reports as follows.

(1) Provider-initiated amended cost reports must be received no later than the date in subparagraph (A) or (B) of this paragraph, whichever occurs first. Amended cost reports received after the required date have no effect on the reimbursement determination. Amended cost report information that cannot be verified will not be used in reimbursement determinations. Provider-initiated amended cost reports must be received no later than the earlier of:

(A) 60 days after the original due date of the cost report; or

(B) 30 days prior to the public hearing on proposed reimbursement or reimbursement parameter amounts.

(2) HHSC-required amendments to the cost reports must be received on or before the date specified by HHSC in its request for

the amended cost report. Failure to submit the requested amendment to the cost report by the due date is considered a failure to complete a cost report as specified in subsection (b)(4)(C) of this section.

(e) Field audit standards. HHSC performs cost report field audits in a manner consistent with Government Auditing Standards issued by the Comptroller General of the United States.

(f) Cost of out-of-state audits. As specified in §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), HHSC conducts desk reviews of all cost reports not selected for field audit. HHSC also conducts field audits of provider records and cost reports. Although the number of field audits performed each year may vary, HHSC seeks to maximize the number of field audited cost reports available for use in its cost projections. Whenever possible, all the records necessary to verify information submitted to HHSC on cost reports, including related party transactions and other business activities engaged in by the provider, must be accessible to HHSC audit staff within the state of Texas within fifteen working days of field audit or desk review notification. When records are not available to HHSC audit staff within the state of Texas, the provider must pay the actual costs for HHSC staff to travel and review the records out-of-state. HHSC must be reimbursed for these costs within 60 days of the request for payment.

(1) For nursing facilities, failure to reimburse HHSC for these costs within 60 days of the request for payment may result in vendor hold as specified in §355.403 of this title.

(2) For SHARS, failure to reimburse HHSC for these costs within 60 days of the request for payment constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.8443 of this title.

(3) For all other programs, failure to reimburse HHSC for these costs within 60 days of the request for payment constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(g) Public hearings.

(1) Uniform reimbursements. For programs where reimbursements are uniform by class of service and/or provider type, HHSC will hold a public hearing on proposed reimbursements before HHSC approves reimbursements. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed statewide uniform reimbursements will be made available to the public. This material will include the proposed reimbursements, the inflation adjustments used to determine them, and the impact on reimbursements of the major cost limits. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a summary of the comments made during the public hearing will be presented to HHSC.

(2) Contractor-specific reimbursements. For programs in which reimbursements are contractor-specific, HHSC will hold a public hearing on the reimbursement determination parameter dollar amounts (e.g., ceilings, floors, or program reimbursement formula limits) before HHSC approves parameter dollar amounts. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursement parameter dollar amounts. Notice of the hearing will be provided to the public. The notice of the public

hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursement parameter dollar amounts. At least ten working days before the public hearing takes place, material pertinent to the proposed reimbursement parameter dollar amounts will be made available to the public. This material will include the proposed reimbursement parameter dollar amounts, the inflation adjustments used to determine them, and the impact on the reimbursement parameter dollar amounts of the major cost limits. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a summary of the comments made during the public hearing will be presented to HHSC.

(h) Insufficient cost data. If an insufficient number of accurate, full-year cost reports is submitted, as would occur with a new program, or if there are insufficient available data, as would occur in changes in program design, changes in the definition of units of service or changes in regulations or program requirements, reimbursements may be based on a pro-forma analysis by HHSC staff. A pro-forma analysis is defined as an item-by-item, or classes-of-items, calculation of the reasonable and necessary expenses for a provider to operate. The analysis may involve assumptions about the salary of an administrator or program director, staff salaries, employee benefits and payroll taxes, building depreciation, mortgage interest, contracted client care expenses, and other building or administration expenses. To determine the cost per unit of service, HHSC adds all the pro-forma expenses and divides the total by the estimated number of units of service that a fully operational provider is likely to provide. The pro-forma analysis is based on available information that is determined to be sufficient, accurate, and reliable by HHSC, including valid cost report data and survey data. The pro-forma analysis is conducted in a way that ensures that the resultant reimbursements are sufficient to support the requirements of the contracted program. When HHSC staff determine that sufficient and reliable cost report data have become available, the pro-forma reimbursement determination may be replaced with a process based on cost reports.

(i) Limits on related-party compensation [salaries, wages and/or benefits]. HHSC may place upper limits or caps on related-party compensation [salaries, wages and/or benefits] as follows:

(1) For related-party administrators and directors, the upper limit for compensation [salaries and wages] is equal to the 90th percentile in the array of all non-related-party annualized compensation [salaries, wages and/or benefits] as reported by all contracted providers within a program. In addition, the hourly compensation [wage and/or benefits] for related-party administrators and directors is limited to the annualized upper limit for related-party administrators and directors divided by 2,080.

(2) For related-party assistant administrators and assistant directors, the upper limit for compensation [salaries and wages] is equal to the 90th percentile in the array of all non-related party annualized compensation [salaries, wages and/or benefits] as reported by all contracted providers within a program. In addition, the hourly compensation [wage and/or benefits] for related-party assistant administrators and assistant directors is limited to the annualized upper limit for related-party assistant administrators and assistant directors divided by 2,080.

(3) For owners, partners, and stockholders (when the owner, partner, or stockholder is performing contract level administrative functions but is not the administrator, director, assistant administrator or assistant director), the upper limits for compensation [salaries and wages] are equal to the upper limits for related-party administrators and directors.

(4) For all other staff types:

(A) For the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions [Persons with Mental Retardation], Home and Community-based Services and Texas Home Living programs, related-party limitations are specified in §355.457 of this title (relating to Cost Finding Methodology), and §355.722 of this title (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(B) For all other programs, related-party compensation is ~~salaries, wages and/or benefits are~~ limited to reasonable and necessary costs as described in §355.102 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2013.

TRD-201301600

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 424-6900



## **TITLE 7. BANKING AND SECURITIES**

### **PART 1. FINANCE COMMISSION OF TEXAS**

#### **CHAPTER 4. CREDIT CARD SURCHARGE APPEAL PROCEDURES**

##### **SUBCHAPTER A. CONTESTED CASE PROCEDURE**

###### **7 TAC §§4.101 - 4.106**

The Finance Commission of Texas (commission) proposes new Chapter 4, §§4.101 - 4.106, concerning Credit Card Surcharge Appeal Procedures.

In general, the purpose of the proposed new rules is to provide procedures for parties to appeal credit card surcharge issues to the commission. The agency circulated an early draft of the proposed new chapter to a variety of stakeholders, including consumer groups, merchants, lenders, attorneys, and other interested parties.

Proposed new Chapter 4 outlines how a credit card surcharge complaint may be appealed to the commission and heard as a contested case under the Administrative Procedure Act. The Office of Consumer Credit Commissioner (OCCC) will represent the commission during any contested case brought under the proposed new rule chapter. The available remedies under the proposed rules are a cease and desist order and restitution to persons who have been improperly charged. The individual purposes of each new proposed rule are outlined in the following paragraphs.

Section 4.101 defines the terms used throughout the chapter.

Section 4.102 provides that the OCCC may accept complaints regarding credit card surcharges, may request additional information from the complainant and merchant, and will notify the merchant of the complaint.

Section 4.103 outlines the procedure the OCCC will follow in providing a recommendation to the commission on whether to initiate a credit card surcharge proceeding. The OCCC will notify the complainant and the merchant of the intended recommendation, including their right to provide written statements to the commission regarding the complaint before the commission's determination.

Section 4.104 describes the initiation of a credit card surcharge proceeding and the requirements for the notice of hearing sent to the respondent.

Section 4.105 requires that any action taken under the new chapter be preceded by a contested case subject to Texas Government Code, Chapter 2001 (the Administrative Procedure Act) and the contested case rules in 7 TAC Chapter 9. Proposed new §4.105 also delineates the enforcement activities that the OCCC may take in connection with a contested case under the chapter.

Section 4.106 delineates the procedure for the commission to issue a final order on a credit card surcharge complaint. The final order may require one or both of the following remedies: a cease and desist order, and restitution to persons who have been improperly charged. In addition, proposed new §4.106 provides that a motion for rehearing is a prerequisite to an appeal of a final order under the section, and that any such appeal must be made in a Travis County district court.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the new rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

For each year of the first five years the new rule chapter is in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed new rules will be that the commission's rules will provide clarity and consistency for parties wanting to appeal a complaint involving credit card surcharges to the commission.

The proposed new rules merely implement a procedure for the commission to enforce the provisions of Texas Finance Code, §339.001. Any costs that may be incurred would be imposed by the statute and are not a result of the proposed rules. Thus, aside from any costs required by the existing statutory provisions, the agency does not anticipate any additional costs to persons who are required to comply with the proposed rules. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the new rules as proposed.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to [laurie.hobbs@occc.state.tx.us](mailto:laurie.hobbs@occc.state.tx.us). To be considered, a written comment must be received on or before the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of the 31st day after the proposed new rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The new rules are proposed under Texas Finance Code, §339.001(c), which states that the commission has exclusive jurisdiction to enforce and adopt rules relating to §339.001. Additionally, Texas Finance Code, §11.304, authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code.

The statutory provisions affected by the proposal are contained in Texas Finance Code, §339.001.

§4.101. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

(1) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(2) Complainant--A person who provides a complaint regarding a credit card surcharge to the finance commission.

(3) Credit card surcharge--A surcharge imposed on a buyer in a sale of goods or services for the use of a credit card instead of cash, a check, or a similar means of payment.

(4) Finance commission--The Finance Commission of the State of Texas.

(5) Merchant--A seller of goods or services.

(6) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(7) Respondent--A person against whom a disciplinary proceeding is directed by the finance commission under this chapter.

§4.102. Credit Card Surcharge Complaints.

(a) The OCCC may accept complaints regarding credit card surcharges.

(b) In connection with a complaint, the OCCC may request additional information from the complainant.

(c) If a complaint concerns a specific merchant, the OCCC will notify the merchant of the complaint. The OCCC may request additional information from the merchant.

§4.103. OCCC's Recommendation of Whether to Initiate Credit Card Surcharge Proceeding.

(a) The OCCC will periodically provide the finance commission with a report of complaints the OCCC has received regarding credit card surcharges.

(b) In connection with each complaint, the OCCC will provide a written recommendation to the finance commission regarding whether or not the finance commission should initiate a proceeding against a merchant.

(c) At least 10 days before making its written recommendation to the finance commission, the OCCC will notify the complainant and the merchant of the intended recommendation. This notification will also state:

(1) that the complainant and merchant have a right to provide written statements regarding the complaint, as provided in subsection (d) of this section;

(2) the date on which the OCCC intends to make the written recommendation to the finance commission; and

(3) that any written statements must be provided on or before the date of the meeting at which the finance commission determines whether to initiate a proceeding.

(d) Before the finance commission determines whether to initiate a proceeding regarding a complaint, both the complainant and the merchant will have the opportunity to provide written statements to the finance commission regarding the complaint.

§4.104. Initiation and Notice of Credit Card Surcharge Proceeding.

(a) Upon the OCCC's recommendation or upon its own motion, the finance commission may initiate a proceeding against a person under this chapter, if the finance commission has reasonable cause to believe that the person has imposed a credit card surcharge in violation of Texas Finance Code, §339.001.

(b) If the finance commission approves initiation of a proceeding, the finance commission will designate the remedies to be sought as provided by subsection (c) of this section.

(c) In a proceeding under this chapter, the finance commission may seek one or both of the following:

(1) that the respondent cease and desist from imposing credit card surcharges in violation of Texas Finance Code, §339.001; and

(2) that the respondent provide restitution to persons upon whom a credit card surcharge was imposed in violation of Texas Finance Code, §339.001.

(d) After the finance commission has initiated a proceeding, the OCCC will send a notice of hearing to the respondent. The commissioner may sign a notice of hearing on the finance commission's behalf.

(e) The notice of hearing must include:

(1) the information required by §9.11(b) of this title (relating to Notice and Initiation of Proceedings); and

(2) if restitution is sought, the information required by §9.11(d) of this title.

(f) Service of the notice of hearing on the respondent must be made in the manner provided in the Texas Rules of Civil Procedure for initiating a civil suit. A hearing under this chapter must be preceded by at least 10 days' notice, as required by Texas Government Code, §2001.051.

§4.105. Contested Case on Credit Card Surcharge.

(a) An action under this chapter is required to be preceded by a contested case.

(b) A contested case under this chapter is subject to Texas Government Code, Chapter 2001, and Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rule-makings). To the extent of any conflict between this chapter and Chapter 9, this chapter prevails.

(c) In connection with a contested case under this chapter, the OCCC may:

(1) file pretrial motions and respond to pretrial motions;

(2) conduct and respond to discovery;

(3) take depositions and represent the finance commission at depositions;

(4) represent the finance commission in a contested case;

(5) contract with an administrative law judge to conduct a contested case hearing; and

(6) provide staff to assist in conducting a contested case hearing.



§4.106. Final Order on Credit Card Surcharge.

(a) A final order issued under this chapter may require one or both of the following:

(1) that the respondent cease and desist from imposing credit card surcharges in violation of Texas Finance Code, §339.001; and

(2) that the respondent provide restitution to persons upon whom a credit card surcharge was imposed in violation of Texas Finance Code, §339.001.

(b) After a contested case hearing under this chapter, the administrative law judge will prepare a proposal for decision and proposed final order, as provided in §9.34 of this title (relating to Post-hearing Proceedings).

(c) After the administrative law judge has circulated the proposal for decision and proposed order to the parties and the parties have had an opportunity to file exceptions and briefs in the manner provided in §9.34(a) of this title, the administrative law judge will submit the proposal for decision and proposed order together with all materials listed in Texas Government Code, §2001.060, to the commissioner for review.

(d) The commissioner will review the proposal for decision and the proposed final order. The commissioner will prepare a recommendation regarding which of the actions described in subsection (e) of this section the finance commission should take. The commissioner will then provide the recommendation, the proposal for decision, the proposed final order, and other case materials to the finance commission.

(e) Upon receiving the case materials from the commissioner, the finance commission may:

(1) adopt the proposal for decision and proposed final order, in whole or in part;

(2) modify and adopt the proposal for decision and proposed final order, in whole or in part;

(3) decline to adopt the proposal for decision and proposed final order, in whole or in part;

(4) remand the proceeding for further examination by the administrative law judge, including for the limited purpose of receiving additional briefing or evidence from the parties on specific issues; or

(5) take another lawful and appropriate action with regard to the case.

(f) After the finance commission has approved a final order, the OCCC will send the final order to the respondent. The commissioner may sign an approved final order on the finance commission's behalf.

(g) To the extent permitted by Texas Government Code, §2001.146(e), in a final order under this section, the finance commission may extend the generally applicable time periods for:

(1) filing a motion for rehearing;

(2) replying to a motion for rehearing; and

(3) ruling on a motion for rehearing.

(h) A timely motion for rehearing is a prerequisite to an appeal of a final order under this section, to the extent provided in Texas Government Code, §2001.145. An appeal of a final order under this section must be made in a Travis County district court, as provided in Texas Government Code, §2001.176(b)(1).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301585

Leslie L. Pettijohn

Consumer Credit Commissioner

Finance Commission of Texas

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 936-7621



## **TITLE 22. EXAMINING BOARDS**

### **PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS**

#### **CHAPTER 1. ARCHITECTS**

##### **SUBCHAPTER J. INTERN DEVELOPMENT TRAINING REQUIREMENT**

###### **22 TAC §1.191**

The Texas Board of Architectural Examiners proposes an amendment to §1.191, concerning Description of Experience Required for Registration by Examination. The amendment concerns the Intern Development Training Requirements to become registered as an architect by examination.

The Intern Development Training Program is administered by the National Council of Architectural Registration Boards (NCARB). The amendments to §1.191 conform the rule to a recent change made by NCARB to increase the number of hours an applicant may earn through academic internships. The amendment to §1.191 removes a 930-hour cap on the number of training hours for which a candidate earn experience credit in an academic internship.

Cathy L. Hendricks, Executive Director for the Board, has determined that for the first five-year period the amended section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no adverse fiscal impact to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Ms. Hendricks also has determined that for each of the first five years the rule as proposed is in effect the public benefit anticipated will be to permit a larger class of architectural candidates to be able to gain architectural licensure in Texas as the amendment expands the opportunities candidates have for gaining practical experience. The proposed rule is also anticipated to accelerate the time it takes to meet the experience requirements for licensure as an architect by providing more options for gaining required experience. Also, by adopting the national model established by NCARB, it is anticipated that the proposed rules will assist Texas architects in gaining licensure in other jurisdictions through reciprocity.

Comments may be submitted to Cathy L. Hendricks, RID, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §1051.202 and §1051.705(a)(2), which provide authority for the Board to adopt rules as necessary to regulate the practice of architecture and to prescribe by rule standards for satisfactory experience to take the architectural registration examination, respectively.

No other statutes, articles or codes are affected by this proposal.

*§1.191. Description of Experience Required for Registration by Examination.*

(a) Pursuant to §1.21 of this title (relating to Registration by Examination), an Applicant must successfully demonstrate completion of the Intern Development Training Requirement by earning credit for at least 5,600 Training Hours as described in this subchapter.

(b) An Applicant must earn credit for at least 260 Core Minimum Training Hours in the area of pre-design in accordance with the following chart:

Figure: 22 TAC §1.191(b) (No change.)

(c) An Applicant must earn credit for at least 2,600 Core Minimum Training Hours in the area of design in accordance with the following chart:

Figure: 22 TAC §1.191(c) (No change.)

(d) An Applicant must earn credit for at least 720 Core Minimum Training Hours in the area of project management in accordance with the following chart:

Figure: 22 TAC §1.191(d) (No change.)

(e) An Applicant must earn credit for at least 160 Core Minimum Training Hours in the area of practice management in accordance with the following chart:

Figure: 22 TAC §1.191(e) (No change.)

(f) An Applicant must earn credit for at least 1,860 elective Training Hours. Credit for elective Training Hours may be earned in any of the categories described in subsections (b) - (e) of this section and/or in other approved activities described in subsection (g) of this section.

(g) An Applicant shall receive credit for Training Hours in accordance with the following chart:

Figure: 22 TAC §1.191(g)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2013.

TRD-201301607

Cathy L. Hendricks, RID, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 305-9040



## PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

### CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) proposes amendments to §§741.11, 741.41, 741.44, 741.61, 741.62, 741.64, 741.82, 741.84, 741.111 and 741.181, concerning the regulation and licensure of speech-language pathologists and audiologists.

#### BACKGROUND AND PURPOSE

In accordance with Occupations Code, Chapter 401, this proposal updates the board's rules to reflect current operational procedures in processing and approving licensure applications and provides clarification of the rules' intent for license holders and the public. The amendments also update licensure requirements for an intern in audiology and an assistant in audiology by reflecting current national standards.

#### SECTION-BY-SECTION SUMMARY

The amendment to §741.11 deletes obsolete language concerning specific duties of the board's secretary-treasurer.

The amendments to §741.41 clarify that licensee notification requirements to the board concerning changes in licensee's name or mailing address should be in writing and what the licensee's remuneration responsibilities concerning services are.

The amendment to §741.44 lowers the years of experience required for a licensee to supervise an intern or assistant; requires that a supervisor of an intern must possess at least a master's degree; and prohibits supervision of a relative.

The amendment to §741.61 clarifies what is acceptable for the professional course work toward a graduate degree.

The amendment to §741.62 reflects current national standards of licensure.

The amendment to §741.64 reflects the board's current requirements for an Assistant in Speech-Language Pathology license.

The amendment to §741.82 reflects the board's current requirements for an Intern in Audiology license.

The amendment to §741.84 updates the rule to reflect the current national standards of licensure.

The amendment to §741.111 updates the board's current application process.

The amendment to §741.181 eliminates the "inactive status fee" from the board's current schedule of licensure fees.

#### FISCAL NOTE

Joyce Parsons, Executive Director, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS ECONOMIC STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Ms. Parsons has also determined that there will be no adverse economic impact to small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses and micro-businesses is not required.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. The amendments do not impose additional fees. There is no anticipated impact on local employment.

#### PUBLIC BENEFIT

Ms. Parsons has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be to ensure the effective regulation of speech-language pathologists and audiologists in Texas, which will protect and promote public health, safety, and welfare.

#### REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Joyce Parsons, Executive Director, State Board of Examiners for Speech-Language Pathology and Audiology, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347. Comments may also be sent through email to [speech@dshs.state.tx.us](mailto:speech@dshs.state.tx.us). Please write "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

### SUBCHAPTER B. THE BOARD

#### 22 TAC §741.11

##### STATUTORY AUTHORITY

The amendment is authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

##### §741.11. *Officers.*

- (a) - (b) (No change.)

~~[(c) The secretary-treasurer shall sign the approved minutes of the board and other approved documents of the board in the absence of the presiding officer and assistant presiding officer.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 17, 2013.

TRD-201301562

Vickie Dionne

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 776-6990



### SUBCHAPTER D. CODE OF ETHICS; DUTIES AND RESPONSIBILITIES OF SUPERVISORS

#### 22 TAC §741.41, §741.44

##### STATUTORY AUTHORITY

The amendments are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendments affect Texas Occupations Code, Chapter 401.

##### §741.41. *Professional Responsibilities of License Holders.*

- (a) A licensee shall:

- (1) - (10) (No change.)

(11) notify the board of changes in name or preferred mailing address within 30 days of such change(s). Notification must include the name, mailing address, and zip code, and be mailed, ~~[telephoned,]~~ faxed, or sent by electronic mail to the executive director;

- (12) - (18) (No change.)

- (b) A licensee shall not:

- (1) - (14) (No change.)

(15) interfere with a board investigation or disciplinary proceeding by willful misrepresentation or omission of facts to the board or the board's designee or by the use of threats or harassment against any person; ~~[or]~~

(16) intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting clients or patronage for or from any health care professional. The provisions of the Texas Health and Safety Code, §161.091, concerning the prohibition of illegal remuneration apply to licensees; ~~[-]~~

(17) endanger the health, welfare, or safety of the public;  
or

(18) use threats, threatening behavior, or acts of violence towards clients, employees, or employers.

##### §741.44. *Requirements, Duties, and Responsibilities of Supervisors.*

(a) A licensee must have two ~~[three]~~ years of professional experience in providing direct client services in the area of licensure in order to supervise an intern or assistant. The licensee's internship year shall be counted toward the two ~~[three]~~ years of experience. ~~[If the licensee does not have the required experience, he or she may submit a written request outlining his or her qualifications and the reason for the request. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.]~~

(b) A licensee may not supervise an individual that is related to the licensee within the first degree of consanguinity.

(c) A supervisor of an intern in speech-language pathology or audiology must possess at least a master's degree with a major in one of the areas of communicative sciences and disorders.

(d) [(b)] A supervisor of an intern or assistant shall:

(1) ensure that all services provided are in compliance with this chapter and the Act, such as verifying:

(A) the intern or assistant holds a current license;

(B) the supervisor has been approved by the board office;

(C) the scope of practice is appropriate; and

(D) the intern or assistant is qualified to perform the procedure;

(2) be responsible for all client services performed by the intern or assistant;

(3) provide appropriate supervision after the board office approves the supervisory agreement; and

(4) supervise no more than a total of four interns and/or assistants. An exception may be made allowing supervision of more than four individuals if the supervisor submits documentation demonstrating their ability to manage the entire caseload. The board's designee will determine if an exception is granted.

(e) [(e)] In addition to the provisions listed in subsection (d) [(b)] of this section, a supervisor of an assistant shall:

(1) be responsible for evaluations, interpretation, and case management; and

(2) not designate anyone other than a licensed speech-language pathologist or intern in speech-language pathology to represent speech-language pathology to an Admission, Review, and Dismissal (ARD) meetings, except as provided by §741.64 of this title (relating to Requirements for an Assistant in Speech-Language Pathology License).

(f) [(d)] A licensed intern or assistant shall abide by the decisions made by the supervisor relating to the intern's or assistant's scope of practice. In the event the supervisor requests that the intern or assistant violate this chapter, the Act, or any other law, the intern or assistant shall refuse to do so and immediately notify the board office and any other appropriate authority.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 17, 2013.

TRD-201301563

Vickie Dionne

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 776-6990



## SUBCHAPTER E. REQUIREMENTS FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

## 22 TAC §§741.61, 741.62, 741.64

### STATUTORY AUTHORITY

The amendments are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendments affect Texas Occupations Code, Chapter 401.

*§741.61. Requirements for a Speech-Language Pathology License.*

(a) - (c) (No change.)

(d) An applicant shall have completed [a minimum of 36 weeks of full-time, or its part-time equivalent, of] supervised professional experience in which clinical work has been accomplished in speech-language pathology as set out in §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License).

(1) - (2) (No change.)

(e) - (g) (No change.)

*§741.62. Requirements for an Intern in Speech-Language Pathology License.*

(a) - (b) (No change.)

~~[(e) An original or certified copy of the transcript showing the conferred degree is required and shall be evaluated under §741.61(b) of this title.]~~

~~(c) [(d)] [Masters students:] An applicant who successfully completed all academic and clinical requirements of §741.61(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience but shall submit verification from the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred. [This letter is in addition to the original or certified copy of the transcripts required in subsection (e) of this section.]~~

~~[(e) Doctoral students: An applicant who has successfully completed all academic and clinical requirements of §741.61(a) - (e) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience. The applicant shall submit an original or certified copy of a letter from the program director or designee verifying the applicant is enrolled in a professionally recognized accredited doctoral program as approved by the board and has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, but has not had the degree officially conferred. This letter is in addition to the original or certified copy of the transcripts required in subsection (e) of this section.]~~

~~(d) [(f)] An applicant whose master's degree is received at a college or university accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation will receive automatic approval of the course work and clinical experience if the program director or designee verifies that all requirements as outlined in §741.61(a) - (c) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree in the area of speech-language pathology.~~

~~(e) [(g)] A Speech-Language Pathology Intern Plan and Agreement of Supervision [An intern plan and agreement of supervision] form shall be completed and signed by both the applicant and~~

the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the intern in speech-language pathology. The supervisor must meet the requirements set out in the Act and §741.44 of this title (relating to Requirements, Duties, and Responsibilities of Supervisors). [shall hold a valid Texas license in speech-language pathology and possess at least a master's degree with a major in one of the areas of communicative sciences and disorders. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying that the supervisor has met this requirement. The licensee's practice when completing the 36-week full time internship may be counted toward the three years of experience. If the supervisor does not have the required experience the supervisor shall submit a written request outlining the supervisor's qualifications and justifications for the request for an exception. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.]

(1) Approval from the board office shall be required prior to practice by the intern in speech-language pathology. The Speech-Language Pathology Intern Plan and Agreement of Supervision form [intern plan and agreement of supervision form] shall be submitted upon:

- (A) application for a license;
- (B) license renewal;
- (C) changes in supervision; and
- (D) the addition of other supervisors.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the intern in speech-language pathology, each supervisor must submit a signed Speech-Language Pathology [shall be identified and the] Intern Plan and Agreement of Supervision form which shall also identify all supervisors [must be signed by each supervisor].

(3) In the event the supervisor ceases supervision of the intern in speech-language pathology, the intern shall stop practicing immediately. The board shall hold the supervisor responsible for the practice of the intern in speech-language pathology until the supervisor notifies the board, in writing, of the change in supervision.

(4) Should the intern in speech-language pathology practice without approval from the board office, disciplinary action may be initiated against the intern in speech-language pathology. If the supervisor had knowledge of this violation, disciplinary action against the supervisor may also be initiated.

(f) [(h)] The internship shall:

- (1) begin within four years after the academic and clinical experience requirements as required by subsection (a) of this section have been met;
- (2) be completed within a maximum period of 48 months once initiated;
- (3) be successfully completed after no more than two attempts;
- (4) consist [of a minimum] of 36 weeks of full-time supervised professional experience (35 hours per week) totaling a minimum of 1260 hours, or its part-time equivalent, of supervised professional experience in which clinical work has been accomplished in speech-language pathology. Professional experience of less than 5 hours per week cannot be used to meet the supervised professional experience. [Full-time employment is defined as a minimum of 35 hours per week in direct client clinical work. Part-time equivalent is defined as follows:]

[(A) 0 - 14 hours per week--no credit will be given;]

[(B) 15 - 21 hours per week for over 72 weeks;]

[(C) 22 - 28 hours per week for over 60 weeks; or]

[(D) 29 - 34 hours per week for over 48 weeks;]

(5) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities;

(6) be divided into three segments with no fewer than 36 clock hours of supervisory activities to include:

(A) six hours of in person observations per segment by the board approved supervisor(s) of the intern's direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation; and

(B) six hours of other monitoring activities per segment with the board approved supervisor(s) which may include correspondence, review of videotapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; or

(C) an alternative plan as approved by the board's designee.

(g) [(h)] An applicant who does not meet the time frames defined in subsection (f)[(h)](1) and (2) of this section shall request an extension, in writing, explaining the reason for the request. The request must be signed by both the intern and the supervisor. Evaluation of the intern's progress of performance from all supervisors must accompany the request. Intern plans and supervisory evaluations for any completed segments must be submitted. Within 15 working days of receipt of the request, the board's designee shall determine if the internship:

(1) should be revised or extended; and

(2) whether additional course work, continuing professional education hours, or passing the examination referenced in §741.121 of this title (relating to Examination Administration) is required.

(h) [(i)] An intern who is employed full-time as defined by subsection (f)[(h)](3) of this section and wishes to practice at an additional site, shall submit the Intern Plan and Agreement of Supervision form for that site.

(i) [(k)] During each segment of the internship, each supervisor shall conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for three years or until the speech-language pathology license is granted. A copy of this documentation shall be submitted to the board upon request.

(j) [(h)] Prior to implementing changes in the internship, approval from the board office is required.

(1) If the intern changes his or her supervisor or adds additional supervisors, a current Intern Plan and Agreement of Supervision Form shall be submitted by the new proposed supervisor and approved by the board before the intern may resume practice. The Report of Completed Internship form shall be completed by the past supervisor and intern and submitted to the board office upon completion of that portion of the internship. It is the decision of the supervisor to determine whether the internship is acceptable. The board office shall evaluate the form and inform the intern of the results.

(2) Each supervisor who ceases supervising an intern shall submit a Report of Completed Internship form for the portion of the internship completed under the supervisor's supervision. This must be submitted within 30 days of the date the supervision ended.

(3) If the intern changes his or her employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall submit a signed statement giving the name, address and phone number of the new location. This must be submitted within 30 days of the date the change occurred.

~~[(4)]~~ If the number of hours worked per week changes but the supervisor and the location remain the same, the supervisor shall submit a signed statement giving the date the change occurred and the number of hours per week the intern is now working. A report of completed internship form shall be submitted for the past experience, clearly indicating the number of hours worked per week. This must be submitted within 30 days of the date the change occurred.]

~~[(k)]~~ [(m)] In any professional context the licensee must indicate the licensee's status as a speech-language pathology intern.

~~[(l)]~~ [(n)] If the intern wishes to continue to practice, within 30 days of completion of the 36 weeks of full-time, or its part-time equivalent, of supervised professional experience as defined in subsection ~~[(f)]~~ [(h)] of this section, the intern shall apply for either:

(1) a speech-language pathology license under §741.61 of this title if the intern passed the examination referenced in §741.121 of this title; or

(2) a temporary certificate of registration under §741.65 [§741.66] of this title (relating to Requirements for a Temporary Certificate of Registration in Speech-Language Pathology) if the intern has not passed the examination referenced in §741.121 of this title.

~~[(m)]~~ [(o)] If the intern holds a valid license, the intern may continue to practice under supervision for up to 30 days after the board office receives the Report of Completed Internship form; ~~or~~ [-]

~~[(n)]~~ [(p)] A licensed intern shall not use "SLP-CFY" or "SLP-CF" as indicators for their credentials. Licensees shall use "Intern SLP" or "SLP Intern" to shorten their professional title.

*§741.64. Requirements for an Assistant in Speech-Language Pathology License.*

(a) An applicant for an assistant in speech-language pathology license shall meet the requirements set out in the Act, and this section. The applicant for the assistant license must:

(1) (No change.)

(2) have acquired the following:

(A) at least 24 semester hours in speech-language pathology and/or audiology with a grade of "C" or above;

(B) - (E) (No change.)

(3) (No change.)

(b) - (d) (No change.)

(e) An applicant who has not acquired the 25 hours of clinical observation and 25 hours of clinical experience referenced in subsection (a)(3) of this section shall not meet the minimum qualifications for the assistant license. These hours must be obtained through an accredited college or university, or through a Clinical Deficiency Plan. In order to acquire these hours, the applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §741.112(d) of this title (relating to Required Application Materials)

and include the prescribed Clinical Deficiency Plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed speech-language pathologist who will provide the applicant with the training to acquire these hours must meet the requirements set out in the Act and §741.44 of this title (relating to Requirements, Duties, and Responsibilities of Supervisors) and shall submit:

(A) - (B) (No change.)

(2) - (7) (No change.)

(f) A supervisory responsibility statement form shall be completed and signed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the licensed assistant. The licensed speech-language pathology supervisor must meet the requirements set out in the Act and §741.44 of this title. [The licensed speech-language pathology supervisor shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this requirement. If the supervisor does not have the required experience, the supervisor shall submit the board prescribed Exception Request to Supervise with less than Three Years Experience form. The board's designee shall evaluate the request and approve or not approve the request within 15 working days of receipt by the board.]

(1) - (5) (No change.)

(g) A licensed speech-language pathology supervisor shall assign duties and provide appropriate supervision to the licensed assistant.

(1) - (4) (No change.)

(5) An exception to paragraph (3) of this subsection may be requested. The supervising speech-language pathologist shall submit the prescribed alternate supervision request plan form for review by the board's designee. Within 15 working days of receipt of the request, the board's designee shall approve or not approve the plan. The plan shall be for not more than one year's duration. ~~[and shall include:]~~

~~[(A)]~~ the name of the licensed assistant;]

~~[(B)]~~ the name and signature of the supervising speech-language pathologist;]

~~[(C)]~~ the proposed plan of supervision;]

~~[(D)]~~ the exact time frame for the proposed plan;]

~~[(E)]~~ the length of time the licensed assistant has been practicing under the requestor's supervision; and]

~~[(F)]~~ the reason the request is necessary.]

(6) - (7) (No change.)

(h) - (I) (No change.)

(m) The board may audit a random sampling of licensed assistants for compliance with this section and §741.44 of this title ~~[(relating to Requirements, Duties, and Responsibilities of Supervisors)]~~.

(1) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 17, 2013.  
TRD-201301564

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**SUBCHAPTER F. REQUIREMENTS FOR  
LICENSURE OF AUDIOLOGISTS**

**22 TAC §741.82, §741.84**

**STATUTORY AUTHORITY**

The amendments are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiography with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendments affect Texas Occupations Code, Chapter 401.

*§741.82. Requirements for an Intern in Audiology License.*

(a) (No change.)

[(b) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the intern license, the applicant shall submit proof of current knowledge of the practice of audiology to be evaluated by the board's designee. The applicant may reapply for the license when the requirements of this section are met.]

[(c) An original or certified copy of the transcript showing the conferred degree is required and shall be evaluated under §741.81(b) of this title.]

(b) [(d)] [An applicant who has successfully completed all academic requirements but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised internship.] The applicant shall submit the board prescribed form signed by the university program director or designee verifying the applicant is enrolled in a professionally recognized accredited doctoral program as approved by the board. [This board prescribed form is in addition to the transcripts required in subsection (e) of this section.]

(c) [(e)] The board prescribed Intern Plan and Agreement of Supervision for an Intern in Audiology [An intern plan and agreement of supervision] form shall be completed and signed by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the intern in audiology. The supervisor shall hold a valid Texas license in audiology and possess a master's degree or higher with a major in one of the areas of communicative sciences and disorders and meet the requirements set out in the Act and §741.44 of this title (relating to Requirements, Duties, and Responsibilities of Supervisors). [The supervisor shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this requirement. If the supervisor does not have the required experience he or she shall submit a written request outlining his or her qualifications and justification for the request for an exception. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.]

(1) Written approval from the board office shall be required prior to practice by the intern in audiology. The Intern Plan and Agreement of Supervision of An Intern in Audiology form [intern plan and agreement of supervision] shall be submitted upon:

- (A) application for a license;
- (B) license renewal;
- (C) changes in supervision; and/or
- (D) addition of other supervisors.

(2) In the event more than one licensed audiologist agrees to supervise the intern in audiology, the primary supervisor shall be identified and separate forms submitted by each supervisor.

(3) In the event the supervisor ceases supervision of the intern, the intern in audiology shall stop practicing immediately until a new supervisor is approved by the board office.

(4) Should the intern in audiology practice without approval from the board office, disciplinary action shall be initiated against the intern. If the supervisor had knowledge of this violation, disciplinary action against the supervisor shall also be initiated.

(d) [(f)] The internship shall:

(1) consist of 1,600 hours of supervised clinical work as defined in paragraph (2) of this subsection. The internship shall begin after completion of all academic course work; and

(2) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals.

(e) [(g)] Prior to implementing changes in the internship, written approval from the board office is required.

(1) If the intern in audiology changes his or her supervisor or adds additional supervisors, a current Intern Plan and Agreement of Supervision of An Intern in Audiology [intern plan and agreement of supervision] form shall be submitted by the new supervisor and approved by the board before the intern in audiology may resume practice. A Report of Completed Internship of An Intern in Audiology [report of completed internship] form shall be completed by the previous supervisor and the intern in audiology and submitted to the board office upon completion of that portion of the internship. It is the decision of the supervisor to determine whether the internship meets the board's requirements. The board office shall evaluate the form and inform the intern in audiology of the results.

(2) A primary supervisor who ceases supervising an intern in audiology shall submit a Report of Completed Internship of An Intern in Audiology [report of completed internship] form for the portion of the internship completed under his or her supervision. This must be submitted within 30 days of the date the supervision ended.

(3) A secondary supervisor who ceases supervising an intern in audiology shall submit written documentation of the intern in audiology's [intern's] performance under their supervision. This must be submitted within 30 days of the date the supervision ended.

(4) If the intern in audiology changes his or her employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall submit a signed statement giving the name, address and phone number of the new location. This must be submitted within 30 days of the date the change occurred.

(5) In any professional context the licensee must indicate the licensee's status as an intern in audiology [intern].

(f) [(h)] The intern in audiology may continue to practice under supervision if he or she holds a valid intern in audiology license while awaiting the processing of the audiology license. If the intern in audiology changes supervisors, the new supervisor shall first submit

the Intern Plan and Agreement of Supervision of An Intern in Audiology [intern plan and agreement of supervision] form and receive board approval before the intern in audiology may resume practice.

*§741.84. Requirements for an Assistant in Audiology License.*

(a) (No change.)

(b) An assistant in audiology is an individual who provides audiology support services to clinical programs under supervision of a licensed audiologist and meets the following requirements:

(1) (No change.)

(2) acquired no fewer than 24 semester hours in speech-language pathology and/or audiology with[;] at least a grade of "C" or above, at least 12 [48] of which must be in audiology core curriculum, including but not limited to anatomy and physiology of speech and hearing, hearing science, basic audiology, aural rehabilitation, hearing instruments and assistive devices, and hearing and deafness, and excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) earned no fewer than 25 hours of clinical observation in the area of audiology and 25 hours of clinical assisting experience in the area of audiology obtained within an educational institution or in one of its cooperating programs, or through an approved clinical deficiency plan in audiology.

(c) The baccalaureate degree shall be completed at a college or university that holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) The transcript(s) submitted must include the following:

(A) be an original [Original] or certified copy of the transcripts showing the date that the degree was conferred; [degree shall be submitted and reviewed as follows:]

(B) [(A)] only course work earned within the past 10 years with a grade of "C" or above is acceptable;

(C) [(B)] a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(D) [(C)] academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) (No change.)

(d) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences and disorders may qualify for the assistant in audiology license. The board's designee shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation and shall determine if the applicant satisfactorily completed 24 semester [graduate] hours in communicative sciences or disorders, 12 of which must be in audiology. [which may include some leveling hours.]

(e) (No change.)

(f) [An applicant who has not acquired the hours referenced in subsection (b)(3) of this section shall not meet the minimum qualifications for the assistant license. Other than acquiring the 25 hours of clinical observation and the 25 hours of clinical assisting experience through an accredited college or university, there are no other exemptions in the Act for an applicant to acquire the hours.] The applicant shall first obtain the assistant in audiology license by submitting the forms, fees, and documentation referenced in §741.112(e) of this title (relating to Required Application Materials) and include a Clinical Deficiency Plan for An Assistant in Audiology form [clinical deficiency

plan] to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed audiologist who will provide the licensed assistant in audiology with the training to acquire these hours must meet the requirements set out in the Act and §741.44 of this title (relating to Requirements, Duties, and Responsibilities of Supervisors) and shall submit:

(A) the prescribed Supervisory Responsibility Statement for An Assistant in Audiology [supervisory responsibility statement] form; and

(B) the prescribed Clinical Deficiency Plan for An Assistant in Audiology form. [a clinical deficiency plan that shall include the following:]

[(i) name and signature of the assistant;]

[(ii) name, qualifications, and signature of the licensed audiologist who will provide the licensed assistant with the training;]

[(iii) number of hours of observation and/or assisting experience lacking;]

[(iv) statement that the training shall be conducted under 100% direct, in person supervision of the assistant; and]

[(v) list of training, consistent with subsection (h) of this section, that shall be completed.]

(2) The board office shall evaluate the documentation and fees submitted to determine if the licensed assistant in audiology license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The Clinical Deficiency Plan for An Assistant in Audiology [clinical deficiency plan] shall be completed within 60 days of the issue date of the license or disciplinary action shall be initiated against the licensed assistant in audiology and the licensed audiology supervisor. [the assistant shall be considered to have voluntarily surrendered the license.]

(4) Immediately upon completion of the clinical deficiency plan for an assistant in audiology, the licensed audiologist who is providing the licensed assistant in audiology with the training identified in the plan shall submit the prescribed Report of Completed of the Clinical Deficiency Plan for An Assistant in Audiology form.[:]

[(A) a supervision log that verifies the specific times and dates in which the hours were acquired with a brief description of the training conducted during each session;]

[(B) a rating scale of the assistant's performance; and]

[(C) a signed statement that the assistant successfully completed the clinical observation and clinical assisting experience under his or her 100% direct, in person supervision of the assistant. This statement shall specify the number of hours completed and verify completions of the training identified in the clinical deficiency plan.]

[(5) In addition to paragraph (4) of this subsection, the assistant shall submit an original signed statement listing the duties that an assistant may and may not perform and acknowledge understanding that the supervisory responsibility statement form shall be received and approved by board staff in order for the assistant to practice.]

(5) [(6)] Board staff shall evaluate the Report of Completed Clinical Deficiency Plan for An Assistant in Audiology [documentation in paragraphs (4) and (5) of this subsection] and inform the licensed audiologist [assistant and trainer] if acceptable.



(6) [(7)] A licensed assistant in audiology may continue to practice under the supervision of the licensed audiologist who is providing the licensed assistant in audiology with the training while the board office evaluates the Report of Completed Clinical Deficiency Plan for An Assistant in Audiology. [the documentation identified in paragraphs (4) and (5) of this subsection.]

(7) [(8)] In the event, another licensed audiologist shall supervise the licensed assistant in audiology after completion of the clinical deficiency plan, a Supervisory Responsibility Statement for An Assistant in Audiology [supervisory responsibility statement] form shall be submitted to the board office seeking approval for the change in supervision. If the Report of Completed Clinical Deficiency Plan for An Assistant in Audiology [documentation required by paragraphs (4) and (5) of this subsection] has not been received and approved by the board office, approval for the change shall not be granted.

(g) The prescribed Supervisory Responsibility Statement for An Assistant in Audiology form must [A supervisory responsibility statement shall] be completed and signed by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the licensed assistant in audiology. The supervisor must meet the requirements set out in the Act and §741.44 of this title. [shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this requirement. If the supervisor does not have the required experience he or she shall submit a written request outlining his or her qualifications and justification for the request for an exception. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.]

(1) Approval from the board office shall be required prior to practice by the licensed assistant in audiology. The Supervisory Responsibility Statement for An Assistant in Audiology form [supervisory responsibility statement] shall be submitted upon:

(A) - (D) (No change.)

(2) In the event more than one licensed audiologist agrees to supervise the licensed assistant in audiology, each licensed audiologist [the primary supervisor] shall be identified and a separate Supervisory Responsibility Statement for An Assistant in Audiology form be [supervisor responsibility statements] submitted by each supervisor.

(3) A licensed [An] assistant in audiology may renew the license but may not practice until a new Supervisory Responsibility Statement for An Assistant in Audiology [supervisor responsibility statement] is approved.

(4) In the event the supervisor ceases supervision of the licensed assistant in audiology, the assistant shall stop practicing immediately.

(5) Should the licensed assistant in audiology practice without approval from the board office, disciplinary action shall be initiated against the licensed assistant in audiology. If the supervisor had knowledge of this violation, disciplinary action against the supervisor shall also be initiated.

(h) A licensed audiologist shall assign duties and provide appropriate supervision to the licensed assistant in audiology.

(1) All [Initial] diagnostic contacts shall be conducted by the supervising licensed audiologist.

(2) Following the initial diagnostic contact, the supervising audiologist shall determine whether the licensed assistant in audiology has the competence to perform specific non-diagnostic and non-prohib-

ited duties before delegating tasks (as referenced in subsection (i)(5) of this section).

(3) The supervising audiologist(s) shall be on-site at the licensed assistant in audiology's employment location for at least ten hours per week, and provide [the minimum of two hours per week,] at least one hour of direct [which is in person] supervision, at the location where the assistant is employed. This applies whether the licensed assistant in audiology [assistant's practice] is employed full or part-time.

[(4) Indirect methods of supervision may include audio and/or video tape recording, telephone communication, numerical data, or other means of reporting.]

(4) [(5)] An exception to paragraph (3) of this subsection may be requested. The supervising audiologist shall submit the prescribed Alternate Supervision Plan of An Assistant in Audiology form to be reviewed [a proposed plan of supervision for review] by the board's designee. The Alternate Supervision Plan of a licensed assistant in audiology [plan] shall be for not more than one year's duration. [and shall include:]

[(A) the name of the assistant;]

[(B) the name and signature of the supervising audiologist;]

[(C) the proposed plan of supervision;]

[(D) the exact time frame for the proposed plan;]

[(E) the length of time the assistant has been practicing under the requestor's supervision; and]

[(F) the reason the request is necessary.]

(5) [(6)] If the Alternate Supervision Plan of An Assistant in Audiology [exception referenced in paragraph (5) of this subsection] is approved and the reason continues to exist, the licensed supervising audiologist shall annually resubmit an updated Alternate Supervision Plan of An Assistant in Audiology form [a request] to be evaluated by the board's designee.

(6) [(7)] Supervisory records shall be maintained by the licensed audiologist for a period of three years which verify regularly scheduled monitoring, assessment, and evaluation of the licensed assistant in audiology's [assistant's] and client's performance. Such documentation may be requested by the board.

(A) A licensed [An] assistant in audiology may conduct assessments for the purpose of documenting patient's progress in aural rehabilitation therapy. Such assessments are not diagnostic in nature and include [which includes] data collection and[.] clinical observation, [and routine test administration] if the licensed assistant in audiology has been appropriately trained and the assessments are conducted under the direction of the audiology supervisor.

(B) A licensed [An] assistant in audiology may not conduct an evaluation which includes diagnostic testing, [test and observation interpretation,] diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(i) Although the licensed supervising audiologist may delegate specific clinical tasks to a licensed [an] assistant, the responsibility to the client for all services provided cannot be delegated. The licensed audiologist shall ensure that all services provided are in compliance with this chapter.

(1) The licensed audiologist need not be in direct supervision [present] when the licensed assistant is completing the assigned tasks; however, the licensed audiologist shall document all services provided and the supervision of the licensed assistant.

(2) (No change.)

(3) The licensed assistant may execute specific components of the clinical ~~[speech, language, and/or]~~ hearing program if the licensed audiologist determines that the licensed assistant has received the training and has the skill to accomplish that task, and the licensed audiologist provides sufficient supervision to ensure appropriate completion of the task assigned to the licensed assistant.

(4) Examples of duties which a licensed ~~[an]~~ assistant may be assigned by the audiologist who agreed to accept responsibility for the services provided by the licensed assistant, provided appropriate training has been received, are to:

(A) (No change.)

(B) conduct aural habilitation or rehabilitation activities or therapy;

(C) provide carry-over activities [which are the] (therapeutically designed transfer of a newly acquired communication ability to other contexts and situations) for patients in aural rehabilitation therapy;

(D) collect data during aural rehabilitation therapy documenting the processing and results of therapy;

(E) administer assessments during aural rehabilitation therapy to assess therapeutic progress [routine tests as defined by the board];

(F) (No change.)

(G) prepare clinical materials; [and]

(H) participate with the licensed audiologist in research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed audiologist;[-]

(I) maintain equipment by conducting biologic and electroacoustic calibration of audiometric equipment, perform preventative maintenance checks and safety checks of equipment;

(J) explain the use and proper care of hearing instruments and assistive listening devices to patients;

(K) maintain hearing instruments including cleaning, replacing ear mold tubing, minor hearing instrument repairs, determining need for repair, and performing biologic and electroacoustic checks of hearing instruments;

(L) provide case history and/or self-assessment forms and clarify questions on the forms to patients as needed;

(M) assist the audiologist with play audiometry, visual reinforcement audiometry, and tasks such as picture-pointing speech audiometry;

(N) assist the audiologist in the evaluation of difficult-to-test patients;

(O) assist the audiologist with technical tasks for diagnostic evaluation such as preparing test rooms, attaching electrodes, and preparing patients prior to procedures;

(P) perform basic screening procedures such as pure tone screening, otoacoustic emissions screening, immittance screening, or screening ear canal status with an otoscope;

(Q) conduct basic record keeping and prepare paperwork for signature by the audiologist;

(R) coordinate ear mold and hearing instrument records or repairs and other orders;

(S) attach hearing aids to computers and use software to verify internal electroacoustic settings;

(T) other duties not prohibited in paragraph (5) of this subsection, for which the assistant has been trained and demonstrates appropriate skills, as assigned by the supervising audiologist.

(5) The licensed assistant shall not:

(A) conduct evaluations or any audiological procedure that requires decision-making or leads to a diagnosis, even under direct supervision; [even under supervision since this is a diagnostic and decision making activity;]

(B) interpret results of procedures and evaluations, except for screening tests; [routine tests;]

(C) make diagnostic statements, or propose or develop clinical management strategies; [interpret observations or data into diagnostic statements, clinical management strategies, or procedures;]

(D) make ear impressions; [represent audiology at staff meetings or on an admission, review and dismissal (ARD);]

(E) cause any substance to enter the ear canal or place any instrument or object in the ear canal for the purpose of removing cerumen or debris; [attend staffing meeting or ARD without the supervisor being present;]

(F) make any changes to the internal settings of a hearing instrument manually or using computer software; [design a treatment program;]

(G) represent audiology at staff meetings or on an admission, review and dismissal (ARD) committee; [determine case selection;]

(H) attend staffing meetings or ARD committee meetings without the supervisor being present; [present written or oral reports of client information;]

(I) design a treatment program; [refer a client to other professionals or other agencies;]

(J) determine case selection; [use any title which connotes the competency of a licensed audiologist; or]

(K) present written or oral reports of client information, except to their supervisor; [practice as an assistant in audiology without a valid supervisory responsibility statement on file in the board office.]

(L) refer a client to other professionals or other agencies;

(M) use any title which connotes the competency of a licensed audiologist; or

(N) practice as licensed assistant in audiology without a valid Supervisory Responsibility Statement for An Audiology Assistant form on file in the board office.

(j) In any professional context the licensee must indicate the licensee's status as a licensed [an] audiology assistant.

(k) A licensed ~~[An]~~ assistant may not engage in the fitting, dispensing or sale of a hearing instrument; however, a licensed audiology ~~[an]~~ assistant who is licensed under the Texas Occupations Code, Chapter 402 may engage in activities as allowed by that law and is not considered to be functioning under his or her audiology assistant license when performing those activities.

(l) The board may audit a random sampling of licensed audiology assistants for compliance with this section and §741.44 of

this title [(relating to Requirements, Duties, and Responsibilities of Supervisors)].

(1) The board shall notify a licensed ~~[an]~~ assistant in audiology and licensed audiologist by mail that he or she has been selected for an audit.

(2) Upon receipt of an audit notification, the licensed assistant in audiology and the licensed audiologist who agreed to accept responsibility for the services provided by the licensed assistant in audiology shall mail the requested proof of compliance to the board.

(3) The licensed assistant in audiology and the supervising audiologist [A licensee and supervisor] shall comply with the board's request for documentation and information concerning compliance with the audit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 17, 2013.

TRD-201301565

Vickie Dionne

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 776-6990



## SUBCHAPTER I. APPLICATION PROCEDURES

### 22 TAC §741.111

#### STATUTORY AUTHORITY

The amendment is authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.111. *Application Process.*

(a) - (c) (No change.)

(d) If additional documentation is required, the application ~~[request]~~ for the license shall remain open no longer than one year ~~[90 days]~~ following the date the board office received the application ~~[request for the license]~~.

(e) If the additional documentation requested is not received before the one year ~~[90 days]~~ referenced in subsection (d) of this section, the request for the license shall be deleted and the fee forfeited.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 17, 2013.

TRD-201301566

Vickie Dionne

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 776-6990



## SUBCHAPTER M. FEES AND PROCESSING PROCEDURES

### 22 TAC §741.181

#### STATUTORY AUTHORITY

The amendment is authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.181. *Schedule of Fees.*

(a) All fees paid to the board are non-refundable. For all applications and renewal applications, the board is authorized to collect subscription and convenience fees, in amounts determined by tex.gov, to recover costs associated with application and renewal application processing through tex.gov. For all applications and renewal applications, the board is authorized to collect fees to fund the Office of Patient Protection within the Health Professions Council, as required by Occupations Code, §101.307 (relating to Health Professions Council Funding of Office.) The schedule of fees is as follows:

(1) - (5) (No change.)

~~[(6) inactive status fee--\$45;]~~

(6) ~~[(7)]~~ license verification fee--\$10;

(7) ~~[(8)]~~ late renewal penalty fee--an amount equal to the renewal fee(s), with a maximum of three renewal fees, plus the examination fee;

(8) ~~[(9)]~~ examination fee--the amount charged by the board's designee administering the examination; and

(9) ~~[(10)]~~ criminal history evaluation letter fee--\$50.

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 17, 2013.

TRD-201301567

Vickie Dionne

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 776-6990



## TITLE 28. INSURANCE

## PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

### CHAPTER 276. GENERAL ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

#### 28 TAC §276.5

The Office of Injured Employee Counsel (OIEC) proposes an amendment to §276.5, concerning an employer's notice requirement of OIEC's Ombudsman Program. The proposed amendment to §276.5 is necessary to reflect OIEC's new website address. This allows for continued compliance of Texas Labor Code §404.153 and §404.154, which requires employers to post notice in the workplace so their employees may be informed as to the services performed by the Ombudsman Program in accordance with House Bill (HB) 7, 79th Texas Legislature, Regular Session, 2005.

Amended §276.5 will adopt by reference the amended version of the Employer Notification of Ombudsman Program to Employees (Notice). Upon adoption, the effective date of the amended Employer Notification of Ombudsman Program to Employees will be September 1, 2013. This provides workers' compensation system participants time to post the amended Employer Notification of the Ombudsman Program.

Mr. Brian White, Deputy Public Counsel, has determined that for each year of the first five years the amended section is in effect, there shall be minimal fiscal impact to state and local governments as a result of the enforcement or administration of this rule. It is anticipated that most employers participating in the workers' compensation system have access to the internet and will be able to download and print the Notice that is required by §276.5. However, should an employer contact OIEC to request a copy of the Notice, the cost of postage, currently at 45 cents per stamp, will be needed to send the employer the Notice. Should every covered employer request OIEC to physically mail a copy of the Notice, as opposed to sending the Notice electronically or having the Notice downloaded from OIEC's website as anticipated, a total postage cost of \$103,240.80 may be incurred by the State of Texas. This estimate is based on the current cost of postage and data provided by the Texas Department of Insurance's Workers' Compensation Research and Evaluation Group, October 2012 report, "Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System, 2012 Results". The formula that was used to calculate the number of workers' compensation subscribers using 2004 data was also used to calculate the number of workers' compensation subscribers for 2012. The resulting estimate is that 229,424 employers participate in the workers' compensation system. There will be no measurable effect on local employment or the local economy as a result of this amended proposal.

Mr. White has also determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the amended proposed section will include a clear understanding of OIEC's statutory mission to assist and advocate on behalf of the injured employees of Texas and an employer and employee population that is more informed as to the services provided by the Ombudsman Program.

All stakeholders will benefit from an increased understanding of OIEC's purpose and the services the Ombudsman Program provides in the workers' compensation system. Employers will ben-

efit from an awareness of services provided by the Ombudsman Program, which is financed through workers' compensation premiums, and employees will benefit from the awareness of the Ombudsman Program, which is specifically designed to assist them should they ever incur a work-related injury. Informing injured employees of OIEC will increase the likelihood that they will be educated as to their rights and responsibilities within the workers' compensation system. It is anticipated that this increased education will help injured employees get in contact earlier with the appropriate agency to provide assistance they require. As a result, it is likely that more injured employees' compensable injuries will be reported within the required 30-day timeframe and therefore covered by insurance carriers. The workers' compensation system is anticipated to function more efficiently as disputes are resolved more quickly, and as a result, the overriding objectives of getting injured employees well and back to work is furthered.

The Department of Information Resources (DIR) provides the management, registration, and authorization for the use of the *texas.gov* domain. The purpose of the domain name change was led by DIR to strengthen the Texas government brand recognition by designating *texas.gov* as the domain name for State agencies. The naming structure is exclusive to government use and allows public trust and citizen confidence to be strengthened in knowing that they are using an official Texas government website when accessing a *texas.gov* site.

As required by the Texas Government Code §2006.002(c), OIEC has determined that the amended proposal will not have an adverse economic effect on small or micro-business. Compliance with Texas Labor Code §409.005 is required for Texas employers participating in the workers' compensation system.

OIEC has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. Therefore a regulatory flexibility analysis is not required.

OIEC has determined that no private real property interests are affected by this amended proposal, and this amended proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. Therefore, this proposal does not constitute a taking or require a takings impact assessment under the Texas Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on June 3, 2013 to Brian White, Deputy Public Counsel/Chief of Staff, Office of Injured Employee Counsel, Mail Code 50, and 7551 Metro Center Drive, Austin, Texas 78744. A request for a public hearing should be submitted separately to the Deputy Public Counsel/Chief of Staff.

The amended section is proposed pursuant to Texas Labor Code §§404.004(a), 404.153, 404.154 and 404.006. Section 404.004 requires OIEC to prepare information of public interest describing the functions of the agency. Section 404.153 provides that each employer shall notify its employees of the ombudsman program as prescribed by OIEC. Section 404.154 provides that OIEC shall widely disseminate information about the ombudsman program. Section 404.006 provides that the public counsel shall adopt rules as necessary to implement Chapter 404 of the Labor Code.

The following sections are affected by this proposal: Texas Labor Code §§404.151, 404.152, 404.154, 404.103, 404.105, and 404.006.

§276.5. *Employer's Notification of Ombudsman Program to Employees.*

(a) All employers participating in the workers' compensation system shall post notice of the Office of Injured Employee Counsel's (OIEC) Ombudsman Program. This notice shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where each employee is likely to see the notice on a regular basis.

(b) This notice of the Ombudsman Program shall be publicly posted in English, Spanish, and any other language that is common to the employer's employees.

(c) This notice shall be the text provided by OIEC without any additional words or changes and may be obtained by:

(1) Downloading the form on OIEC's website at: [www.oiec.texas.gov](http://www.oiec.texas.gov) [[www.oiec.state.tx.us](http://www.oiec.state.tx.us)]; or

(2) Requesting the notice by calling OIEC's toll-free telephone number at: 1-866-EZE-OIEC (1-866-393-6432).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2013.

TRD-201301613

Brian White

Deputy Public Counsel/Chief of Staff

Office of Injured Employee Counsel

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 804-4170



## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 10. TEXAS WATER DEVELOPMENT BOARD**

#### **CHAPTER 354. MEMORANDA OF UNDERSTANDING**

##### **31 TAC §354.1**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Water Development Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Water Development Board (board) proposes the repeal of §354.1, concerning Memorandum of Understanding between Texas Water Development Board and Texas Historical Commission (THC).

##### **BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEAL**

This section is proposed for repeal because a new §354.1 is proposed elsewhere in this issue of the *Texas Register*. The board has determined that due to the extensive reorganization of proposed new §354.1, repeal of the entire section is more efficient than to propose amendments for the changes. The revision of §354.1 results from review and changes negotiated by the board and the THC relating to procedures for compliance with state historic preservation statutes.

The repeal of §354.1 in its entirety provides the public with an opportunity to better understand the proposed new §354.1 without the confusion of extensive amendments. Current §354.1 affects the work of the board, the THC, and applicants for financial assistance from the board and their consultants. The rule provides for the conduct of archeological surveys under Texas Antiquities Permits, conditions on release of funds related to disposition of archeological and historic resources following commission review, and conditions for treatment of archeological and historic resources discovered during project construction. Section 354.1 is based on Texas Natural Resources Code Chapter 191, the Texas Antiquities Code, and Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board, and §6.104, which authorizes the board to enter into a memorandum of understanding with any other state agency and requires adoption by rule of any memorandum of understanding.

##### **FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS**

Rebecca Trevino, Chief Financial Officer, has determined that there is no fiscal impact to state or local governments as a result of this proposed repeal, because a rule governing the same subject matter is revised and proposed simultaneously with this repeal.

##### **PUBLIC BENEFITS AND COSTS**

Ms. Trevino has determined that there are public benefits to repealing this section because the proposed new section will be more streamlined and orderly and will clarify revised responsibilities of the board, the commission, and applicants for board funding. Additionally, Ms. Trevino has determined that there are no increased costs to public applicants for board funding resulting from the repeal of this section.

##### **LOCAL EMPLOYMENT IMPACT STATEMENT**

Ms. Trevino has determined that a local employment impact statement is not required, because the proposed repeal does not adversely affect a local economy in a material way for the first five years that the repeal is in effect as it will impose no new requirements on local economies.

Ms. Trevino has also determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of the repeal of this section. The board has also determined that there is no anticipated economic cost to persons who are otherwise required to comply with the rule that is proposed for repeal. Therefore, no regulatory flexibility analysis is necessary.

##### **REGULATORY IMPACT ANALYSIS**

Ken Petersen, General Counsel, has determined that the proposed repeal is not subject to Texas Government Code §2001.0225 because it is not a major environmental rule under that section.

##### **TAKINGS IMPACT ASSESSMENT**

Mr. Petersen has determined that the promulgation and enforcement of this proposed repeal will constitute neither a statutory nor a constitutional taking of private real property. The proposed repeal does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the repeal does not impose a burden nor restrict or limit the owner's right to property. Therefore, the proposed repeal does

not constitute a taking under Texas Government Code Chapter 2007.

#### SUBMITTAL OF COMMENTS

Comments on the proposed repeal will be accepted for 30 days following publication and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231; by e-mail to [rulescomments@twddb.texas.gov](mailto:rulescomments@twddb.texas.gov); or by fax at (512) 475-2053.

#### STATUTORY AUTHORITY

This repeal is proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

Cross reference to statute: Texas Water Code §6.104.

*§354.1. Memorandum of Understanding Between Texas Water Development Board and Texas Historical Commission.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2013.

TRD-201301608

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 463-8061



#### 31 TAC §354.1

The Texas Water Development Board (board) proposes new §354.1, concerning Memorandum of Understanding (MOU) between the board and the Texas Historical Commission (THC).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED NEW SECTION

This proposed new §354.1 replaces current §354.1 in its entirety. Current §354.1 is proposed for repeal elsewhere in this issue of the *Texas Register*. The proposed new §354.1 revises the responsibilities of the parties and reorganizes the contents of the MOU to make clear those responsibilities.

#### CHANGES IN THE PROPOSED NEW SECTION

Under the previous rule, board staff conducted archeological surveys as required by 13 TAC Chapter 26 rules relating to permits issued by the THC. Under the proposed MOU, consultants assisting applicants for board financial assistance are responsible for conducting necessary archeological surveys and documenting project review by the THC. Proposed new §354.1(b)(1) provides that board staff archeologists will determine whether a project qualifies for a Determination of No Effect or a Categorical Exclusion and will notify the THC of its conclusion. Under proposed new §354.1(b)(2), if archeological surveys of projects are necessary the board applicant will coordinate with the THC. Under proposed new §354.1(b)(3), the board will release funds following receipt of a notice to proceed from the THC; and proposed new §354.1(c) provides for conditions for treatment of archeological and historic resources discovered during project construction.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Rebecca Trevino, Chief Financial Officer, has determined that there will not be any additional estimated costs to state or local governments as a result of enforcing or administering the rule for the first five years the rule will be in effect. This rule contains procedural and substantive directives to the board, the THC, and applicants for board funding that are required to comply with the directives. There are no estimated additional costs because the directives are connected directly to statutory processes with which the agencies and board applicants must comply.

Ms. Trevino has determined that there are no estimated reductions in costs to state or local governments as a result of enforcing or administering this rule for the first five years the rule will be in effect. There are no changes to the duties or responsibilities of any state or local governmental entity. In addition, Ms. Trevino has determined that there will not be any loss of or increase to revenue to state or local governments as a result of enforcing or administering this rule for the first five years that the rule will be in effect. This proposed rule does not affect the revenues of state or local governments.

#### PUBLIC BENEFITS AND COSTS

Ms. Trevino has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from the rule because the rule is not directed to members of the public but serves to protect the archeological and historic resources of the state. Additionally, the rule provides a public benefit through improved clarity and elimination of unnecessary requirements that will assist the public in understanding the activities of the board and the THC. These public benefits will be effective for the first five years the rule is in effect.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Ms. Trevino has determined that a local employment impact statement is not required, because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect as it will impose no new requirements on local economies.

Ms. Trevino has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of this rule. The board has also determined that there is no anticipated economic cost to persons who are otherwise required to comply with the rule as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### REGULATORY IMPACT ANALYSIS

Ken Petersen, General Counsel, has determined that the proposed rule is not subject to Texas Government Code §2001.0225 because it is not a major environmental rule under that section.

#### TAKINGS IMPACT ASSESSMENT

Mr. Petersen has determined that the promulgation and enforcement of this proposed rule will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the rule does not impose a burden nor restrict or limit the owner's right to property. Therefore, the proposed rule does not constitute a taking under Texas Government Code Chapter 2007.

#### SUBMITTAL OF COMMENTS

Comments on the proposed new rule will be accepted for 30 days following publication and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231; by e-mail to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov); or by fax at (512) 475-2053.

#### STATUTORY AUTHORITY

The new rule is proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

Cross reference to statute: Texas Water Code §6.104.

#### §354.1. Memorandum of Understanding with Texas Historical Commission.

##### (a) Introduction.

(1) Whereas, the Texas Water Development Board (TWDB) and the Texas Historical Commission (THC) desire to enter into a memorandum of understanding (MOU) to help define how the TWDB will ensure projects funded by the TWDB receive appropriate consideration of potential impacts to all types of archeological sites, historic buildings, historic structures and cemeteries under the Antiquities Code of Texas (Texas Natural Resources Code Chapter 191); and

(2) Whereas, under the provisions of Texas Water Code §6.104, TWDB may enter into a MOU with any other state agency and shall adopt by rule any MOU between TWDB and any other state agency; and

(3) Whereas, under the provisions of Texas Government Code Chapter 442, the THC is charged with the responsibility for the protection and preservation of the archeological and historical resources of Texas; and

(4) Whereas, under the provisions of the Texas Health and Safety Code Chapter 711, the THC has a number of specified roles, including the removal of burials from unknown or abandoned cemeteries; and

(5) Whereas, under the provisions of Texas Natural Resources Code §§191.051, 191.053, and 191.054, THC may contract with or issue permits to other state agencies for the discovery and scientific investigation of archeological deposits;

(6) Now, therefore, the TWDB and the THC agree to enter into this MOU regarding appropriate review of potential impacts to all types of archeological sites, historic buildings, historic structures or cemeteries for all projects to be constructed with financial assistance from the TWDB.

(b) Pre-construction Phase Responsibilities. In compliance with 13 TAC Chapter 26, TWDB will ensure that applicants for financial assistance provide the TWDB with documentation of appropriate coordination with the THC during the project planning phase for review of potential impacts to cultural resources on lands belonging to or controlled by any county, city, or other political subdivision of the State of Texas that may be impacted by proposed development projects funded in whole or in part by TWDB.

(1) Certain categories of projects funded by the TWDB, as defined under 31 TAC Chapter 371, Subchapter E; 31 TAC Chapter 375, Subchapter E; and 31 TAC §363.14, may be excluded from the formal environmental review requirements when proposed project scope or construction methods will not have any adverse impacts to the human environment, including cultural resources, such as rehabilitation or direct functional replacement of existing pipelines, pump sta-

tion equipment, storage tanks, or treatment facility equipment. Such categories may include:

(A) State Funded Programs: a Determination of No Effect; or

(B) Federal Equivalency Programs: a Categorical Exclusion.

(C) TWDB will send THC the documents in this subsection as notification that the project has been excluded from formal environmental review and may not require THC review. The THC will not need to respond to Categorical Exclusions or Determinations of No Effect.

(2) For projects not eligible to receive a Categorical Exclusion or a Determination of No Effect, or for projects that may be excluded from formal environmental review once concerns about potential impacts have been adequately addressed, a TWDB applicant, or its consultants, may coordinate with THC to seek recommendations regarding the need for field investigations or to seek concurrence with a determination that the project may proceed without further investigations.

(A) For projects requiring field investigations, the TWDB applicant, or its consultants, will proceed as directed by the THC in a manner consistent with the Antiquities Code of Texas and the Archeological Survey Standards for Texas.

(B) The TWDB will not approve reports required under a Texas Antiquities permit or make recommendations regarding scope of work to the THC.

(3) For projects requiring coordination with the THC, the TWDB will not release funds for the design or construction phases of a project until written approval that a project may proceed has been received from the THC.

(c) Construction Phase Responsibilities. The TWDB will condition all financial assistance, consistent with 13 TAC §26.11 (relating to Location and Discovery of Cultural Resources and Landmarks), that if an archeological site is discovered during project construction:

(1) work will cease in the area of the discovery;

(2) the site will be protected; and

(3) the discovery will be reported immediately to the THC.

(4) As necessary, the TWDB will condition financial assistance to include THC recommendations for measures intended to ensure avoidance, minimization, or mitigation of potential impacts to cultural resources, such as construction monitoring by a qualified archaeologist.

(d) Term. This MOU will remain in full force and effect for the period of four years or until canceled by the written notice of either party. The MOU may be amended by mutual written agreement between the TWDB and the THC.

(e) Review. This MOU shall be reviewed and updated as provided by law or by agreement between the parties. THC and TWDB agree to convene every four years to review, update, or extend this agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2013.  
TRD-201301609

Kenneth L. Petersen  
General Counsel  
Texas Water Development Board  
Earliest possible date of adoption: June 2, 2013  
For further information, please call: (512) 463-8061



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER GG. INSURANCE TAX

##### 34 TAC §3.811

The Comptroller of Public Accounts proposes an amendment to §3.811, concerning election by reciprocal or interinsurance exchange pursuant to Insurance Code, Chapter 224. The amendment is to include a reference to the form for election withdrawal, to clarify the election of either Chapter 221 or 224 under which these entities are subject to tax, to include a reference to the applicability of this section to Insurance Code, Chapter 221, and to remove two cites to specific sections of Chapter 224 in subsection (g).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the manner in which these exchanges would be taxed under the Insurance Code. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §111.002 and §111.0022, and Insurance Code, §201.051(b), which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Insurance Code, Chapter 224.

*§3.811. Election by Reciprocal or Interinsurance Exchange Pursuant to Insurance Code, Chapter 224.*

(a) Reciprocal or interinsurance exchanges authorized under Insurance Code, Chapter 942, are subject to premium and maintenance taxes as are all other [licensed] insurance carriers. A reciprocal or interinsurance exchange is subject to the tax imposed under Insurance Code, Chapter 224 unless it elects [must either affirmatively elect] to be subject to the tax imposed under Insurance Code, Chapter 221~~;~~ or it will be subject to the tax imposed under Insurance Code, Chapter 224.

[(b) Election: Under Insurance Code, Chapter 224, a reciprocal or interinsurance exchange may elect to be taxed under Chapter 221.]

(1) To make the election, a reciprocal or interinsurance exchange must submit a statement in writing on a form prescribed by the comptroller making such an election. The comptroller has developed form 25-208 for this purpose. This form must be filed no later than the 31st day before the beginning of the tax year for which the election is to be effective. For example, to be taxed under Insurance Code, Chapter 221 for the 2012 tax year, the reciprocal or interinsurance exchange must have filed this form by December 1, 2011.

(2) A reciprocal or interinsurance exchange that elects to be taxed under Insurance Code, Chapter 221, will continue to be taxed under that article for each tax year until written notice is given to the comptroller that the election is withdrawn. The comptroller has developed form 25-208 for this purpose. The notice of withdrawal must be filed with the comptroller not later than the 31st day before the beginning of the tax year for which the withdrawal is to be effective.

(3) Form 25-208 is available on the comptroller's website at: <http://www.window.state.tx.us/taxinfo/taxforms/25-forms.html>.

(b) [(e)] If a reciprocal or interinsurance exchange does not file an election as provided by this section or has withdrawn the election, the reciprocal or interinsurance exchange is subject to [the] tax using the rate imposed under Insurance Code, Chapter 224.

(c) [(d)] Insurance Code, Chapter 221, imposes an annual [a] tax equal to 1.6% of the gross premium receipts of licensed insurance carriers and reciprocal or interinsurance exchanges that have filed an election to be taxed under this chapter [transacting business under the authority of this article].

(d) [(e)] Insurance Code, Chapter 224, imposes an annual tax equal to 1.7% of the gross premium receipts of [on] each reciprocal or interinsurance exchange that has not filed an election or that has withdrawn a prior election to be taxed under Insurance Code, Chapter 221. [exchange transacting business in this state an annual tax equal to 1.7% of its gross premium receipts.]

(e) Except as provided by subsection (d) of this section, Insurance Code, Chapter 221 applies to the imposition, computation, and administration of the tax imposed by Insurance Code, Chapter 224 in the same manner that Insurance Code, Chapter 221 applies to the tax imposed by that Chapter.

(f) Failure to file and pay taxes as provided under Insurance Code, Chapter 221 or Chapter 224~~;~~ §224.002, or Chapter 224, §224.003, will subject the taxpayer to penalty and interest under Tax Code, Title 2, Subtitles A and B.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301581

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 475-0387





# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

### CHAPTER 3. TEXAS HIGHWAY PATROL SUBCHAPTER B. ENFORCEMENT ACTION

#### 37 TAC §3.28

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Public Safety (the department) proposes the repeal of §3.28, concerning Citation Disposition Receipt Program. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined the reason for initially adopting this rule no longer exists, therefore the repeal of §3.28 is necessary.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be current and updated rules.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Major Ron Joy, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2115. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to

review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3) and §2001.039, are affected by this proposal.

§3.28. *Citation Disposition Receipt Program.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301587

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 424-5848



## SUBCHAPTER D. TRAFFIC SUPERVISION

#### 37 TAC §3.57

The Texas Department of Public Safety (the department) proposes amendments to §3.57, concerning Traffic Warrant Service. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to this rule was necessary to reflect the current procedures and requirements as determined by Texas Code of Criminal Procedure, Article 15.17 and the courts in reference to the disposition of a served traffic warrant.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by drivers and passengers with all of the statutes and regulations pertaining to the safe operation of vehicles in this state.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly,

the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Major Ron Joy, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2115. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3) and §2001.039, are affected by this proposal.

*§3.57. Traffic Warrant Service.*

[(a)] [Warrant actually served:] When a traffic warrant is actually served and the defendant is taken into custody, the arresting officer will handle the defendant as prescribed by the Texas Code of Criminal Procedure, Article 15.17.

[(b)] Alternate method for disposing of traffic warrant without arrest of defendant: When the magistrate issuing the warrant has indicated a willingness to accept a stated amount of fine upon a plea of guilty or nolo contendere, this information will be given to the defendant and the following explanations will be made to him:]

[(1)] The defendant has a right to make bond and appear in court in person; and the alternate method of disposing of this case is extended to the defendant as a courtesy and the terms thereof are not subject to modification or negotiation by the officer who has the warrant:]

[(2)] The defendant's cashier's check or money order for the amount stated, payable to the judge who issued the warrant, will be attached to the unserved warrant and returned through department channels to the court with the notation that the alternate method of disposing of his case was chosen and the warrant was not served:]

[(3)] Cash money may be accepted by commissioned officers in payment of a traffic warrant only when a cashier's check or money order is not readily available. Officers accepting cash under these circumstances will execute the proper receipt form and cause the money and a copy of the receipt to be mailed by the defendant in a U.S. postal receptacle to the appropriate court:]

[(4)] When the unserved warrant and defendant's cashier's check, money order, or cash are received by the court, this will be considered as a plea of nolo contendere to the charge against him:]

[(5)] The decision to handle the case in the alternate method or appear in court is entirely up to the defendant:]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301586

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 424-5848

◆ ◆ ◆  
**37 TAC §3.61**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Public Safety (the department) proposes the repeal of §3.61, concerning Safety Responsibility Activities. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined the reason for initially adopting this rule no longer exists, therefore the repeal of §3.61 is necessary.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be current and updated rules.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Major Ron Joy, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2115. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3) and §2001.039, are affected by this proposal.

*§3.61. Safety Responsibility Activities.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301588

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 424-5848



## CHAPTER 19. BREATH ALCOHOL TESTING REGULATIONS

### SUBCHAPTER A. BREATH ALCOHOL TESTING REGULATIONS

#### 37 TAC §§19.1, 19.2, 19.4 - 19.6

The Texas Department of Public Safety (the department) proposes amendments to §§19.1, 19.2, and 19.4 - 19.6, concerning Breath Alcohol Testing Regulations. Pursuant to Government Code, §2001.039, the department reviewed Chapter 19, Breath Alcohol Testing Regulations, and determined an update to these rules was necessary to allow the Department greater flexibility to efficiently carry out the provisions of Chapter 19. Furthermore, the amendments will clarify the intent of these rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing these rules will be increased efficiency and clarification of the rules thereby minimizing misinterpretation.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Randall Beaty, Crime Laboratory Service, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section; Texas Transportation Code, §724.016, which authorizes the department to establish rules approving satisfactory analytical methods; and §724.003, which authorizes the department to adopt rules to administer Chapter 724 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and §2001.039, and Texas Transportation Code, Chapter 724, are affected by this proposal.

#### §19.1. Definitions.

The following words and phrases, when used in this chapter, shall have the following meanings, unless the context shall clearly indicate otherwise.

(1) - (16) (No change.)

(17) Reference sample device [~~Sample Device~~]-An apparatus or device designed to provide a reference sample or analytical test standard.

(18) - (19) (No change.)

(20) Scientific director [~~Director~~]-The individual or his designee responsible for the implementation, administration and enforcement of the Texas breath alcohol testing regulations.

(21) - (24) (No change.)

(25) Technical supervisor [~~Supervisor~~] and technical supervision--An individual meeting the minimum requirements set forth in §19.6 of this title (relating to Technical Supervisor Certification) and the responsibilities of such.

#### §19.2. Instrument Certification.

(a) The Office of the Scientific Director, Alcohol Testing Program, Texas Department of Public Safety (hereinafter referred to as the scientific director) shall approve and certify all breath test instruments to be used for evidential purposes.

(1) (No change.)

(2) A manufacturer or designated representative desiring approval of an instrument not on the approved list may submit an instrument to the scientific director [~~a production model of the instrument~~]. Examination and evaluation of the instrument to determine if it meets the criteria for approval or certification as an evidential instrument will be done at the discretion of the scientific director. Costs [~~All shipping costs~~] associated with such a submission will be done at the expense of the submitting entity.

(b) In order to be approved each instrument must meet the following criteria:

(1) Breath specimens [~~collected~~] for analysis shall be essentially alveolar or deep lung air in composition.

(2) - (4) (No change.)

(c) Upon proof of compliance with subsection (b) of this section the instrument will be placed on the list of approved instruments.

(1) Inclusion on the scientific director's list of approved instruments will verify that the instrument by manufacturer brand or model designation meets the criteria of subsection (b) of this section.

(2) (No change.)

(d) - (e) (No change.)

§19.4. *Approval of Techniques, Methods and Programs.*

(a) - (b) (No change.)

(c) All breath alcohol testing techniques, in order to be approved, shall meet, but not be limited to, the following:

(1) - (7) (No change.)

(8) designation that the instrumentation will be used only:

(A) for testing subjects that are suspected of violating any statute or codified rule that defines intoxication in terms of alcohol concentration; and

(B) (No change.)

(d) - (h) (No change.)

§19.5. *Operator Certification.*

(a) Certification.

(1) Prior to certification an applicant must establish proof of participation in a breath test program meeting the requirements set forth in §19.4 of this title (relating to Approval of Techniques, Methods and Programs).

(2) Conviction history:

(A) - (B) (No change.)

(C) persons receiving a driver license suspension for refusal to submit to a chemical test as per the provisions of Texas Transportation Code, Chapter 724 or Chapter 522; Texas Transportation Code within the last five ~~ten~~ years shall not be eligible to be a certified operator.

(3) - (6) (No change.)

(b) - (d) (No change.)

(e) Recertification.

~~[(4)]~~ Certification that has been inactivated or suspended must be regained before evidential analyses may be administered. It will be the responsibility of the inactivated or suspended operator to notify the scientific director ~~[in writing]~~ of such intent. Recertification shall take place pursuant to the following:

(1) ~~[(A)]~~ recertification after inactivation for the failure to complete the renewal process prior to the expiration of current certification will be pursuant to subsection (a)(4) of this section;

(2) ~~[(B)]~~ recertification after inactivation or suspension will be pursuant to subsection (a)(4) of this section;

~~[(C)]~~ recertification after an inactivation or suspension period of greater than five years the operator must attend and satisfactorily complete the initial course of instruction for certification of a breath test operator pursuant to subsection (a) of this section.

(3) ~~[(D)]~~ recertification after a change in instrumentation or testing methodologies will be at the discretion of the scientific director, pursuant to subsection (a)(6) of this section.

(f) - (g) (No change.)

§19.6. *Technical Supervisor Certification.*

(a) The primary function of the technical supervisor is to provide the technical, administrative and supervisory expertise in safeguarding the scientific integrity of the breath alcohol testing program and to assure the breath alcohol testing program's acceptability for evidential purposes. The technical supervisor, in matters pertaining to

breath alcohol testing, is the field agent of the scientific director. Supervision by the technical supervisor in accordance with the provisions stated in these regulations shall include, but not be limited to:

(1) (No change.)

(2) supervision of certified instrumentation, reference sample devices and affiliated equipment ~~[in an assigned area]~~;

(3) supervision of data gathered for initial certification and/or approval of individual instruments and reference sample devices ~~[in an assigned area]~~;

(4) - (6) (No change.)

(7) all technical, administrative and regulatory aspects of breath alcohol testing ~~[within a designated area]~~; and

(8) expert testimony by direct testimony or by written affidavit concerning all aspects of breath alcohol testing ~~[within an assigned area]~~.

(b) The minimum qualifications for certification as a technical supervisor are:

(1) - (5) (No change.)

(6) Conviction history:

(A) - (B) (No change.)

(C) persons receiving a driver license suspension for refusal to submit to a chemical test as per the provisions of Texas Transportation Code, Chapter 724 or Chapter 522; Texas Transportation Code within the last five ~~ten~~ years shall not be eligible to be a certified technical supervisor.

(c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301589

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 424-5848



## CHAPTER 32. BICYCLES--USE AND SAFETY

### 37 TAC §§32.1 - 32.3

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Public Safety (the department) proposes the repeal of §§32.1 - 32.3, concerning Bicycles--Use and Safety. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined the reasons for initially adopting these rules no longer exist. This chapter is obsolete and the Bicycle Safety Program at the department is defunct.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are

in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be current and updated rules.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Beth Warren, Employee Development, Department of Public Safety, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3) and §2001.039, are affected by this proposal.

§32.1. *Definitions.*

§32.2. *Use of Electric Bicycles.*

§32.3. *Bicycle Safety and Education Program.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301590

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 424-5848



## CHAPTER 36. METALS REGISTRATION

### 37 TAC §§36.1 - 36.7, 36.9 - 36.24

The Texas Department of Public Safety (the department) proposes amendments to §§36.1 - 36.7, 36.9 - 36.14, 36.17 and 36.18 and proposes new §§36.15, 36.16 and 36.19 - 36.24, concerning Metals Registration. This proposal is filed simultaneously with the repeal of current §§36.15, 36.16 and 36.19 - 36.21. Many of the proposed amendments are necessitated by amendments to Texas Occupations Code, Chapter 1956 (the Act) as a result of 82nd Legislature, 2011, Senate Bill (SB) 694. Other amendments are required to facilitate the department's move toward online and electronic application submission and data collection. These proposals are necessary to reorganize existing language, improve clarity, and to establish consistency when possible with other programs within the department's Regulatory Services Division. Each rule has also been amended to eliminate references to paper forms and to establish the requirement of online submissions.

Specifically, §36.1 is amended to strike the reference to "dealer of crafted precious metals" within the definition of applicant, in accordance with the statutory change to the registration of such entities effected through SB 694.

Section 36.9 is amended to clarify the requirements for the renewal of registrations.

Section 36.12 is amended to modify the criteria for which the department will revoke a certificate of registration, to include the submission of a dishonored or invalid payment.

Section 36.14 is amended to remove redundant language.

New §36.15 provides guidance for staff and licensees regarding the procedure for obtaining an exemption from the electronic reporting requirements of SB 694, as authorized by the bill.

Section 36.19 is repealed, as dealers of crafted precious metals are no longer regulated by the department pursuant to SB 694. The original language from former §36.20, concerning Fees, is transferred to new §36.19. Language in new §36.19 is changed to reflect that application fees are non-refundable and to clarify the procedure for online payment of fees.

New §36.20 is proposed pursuant to the requirements of SB 694, relating to the documentation required of those who would sell burned insulation wire.

New §§36.21, 36.22 and 36.23 are based on the requirements of Occupations Code, Chapter 55, relating to accommodations for applicants and spouses of applicants who are members of the military.

New §36.24 clarifies the scope of the registration as being limited to a single physical location.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the proposal is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendments and new sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the amendments and new sections as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal will be

a reduction in metal theft and related crimes and improved efficiency in the administration of the statute through greater use of online portals, electronic data transmission and storage.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These new and amended rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act; and §1956.032(a)(5) and (h), which require that the commission adopt rules establishing the type of documentation required of those who seek to sell burned insulation wire.

Texas Government Code, §411.004(3), and Texas Occupations Code, §§1956.013, 1956.014 and 1956.032(a)(5) and (h), are affected by this proposal.

#### *§36.1. Definitions.*

- (a) Act--Texas Occupations Code, Chapter 1956.
- (b) Applicant--A person [~~Any owner, corporate officer, and/or operator of a metal recycling entity, or a dealer of crafted precious metal~~] who has applied for registration under the Act.
- (c) Business owner--A proprietor, partner, member, or individual.
- (d) Commission--The Public Safety Commission.
- (e) Department--The Texas Department of Public Safety.
- (f) Fixed location--A building or structure for which a certificate of occupancy can be issued.
- (g) On-site representative--A person responsible for the day-to-day operation of the location.
- (h) Person--A corporation, organization, agency, business trust, estate, trust, partnership, association, holder of a certificate of registration, an individual, or [and] any other legal entity.
- (i) Program--The Metals Registration Program.

(j) Registrant--A person who holds a certificate of registration covered by this chapter.

(k) Revocation--The withdrawal of authority to act as a metal recycling entity under the Act.

(l) Statutory agent--The natural person [~~or entity~~] to whom any legal notice may be delivered for [~~at~~] each location.

(m) Suspension--A temporary cessation of the authority to act as a metal recycling entity under the Act.

#### *§36.2. Address on File.*

(a) All registrants or applicants [~~shall~~] at all times shall maintain on file with the department their current mailing and principal place of business address. The principal place of business address must be a physical address and may not be a post office box.

(b) All registrants or applicants [~~shall~~] at all times shall maintain on file with the department a current and valid electronic mail address.

(c) All registrants shall notify the department of any change of their mailing or electronic mail address using [~~by completing the Change of Address Form (MRB 7) on~~] the department's online application [~~program's website~~] prior to the effective date of the change of address.

#### *§36.3. Notice.*

(a) The department is entitled to rely on the mailing and electronic mail address currently on file for all purposes relating to notification. The failure to maintain a current mailing and electronic mail address with the department is not a defense to any action based on the registrant's or applicant's failure to respond.

(b) Service upon the registrant or applicant of notice is complete and receipt is presumed upon the date the notice is sent, if sent before 5:00 p.m. by facsimile or electronic mail, and the department receives confirmation of the transmission. [~~and~~] If the notice is received after 5:00 p.m. or on a weekend or holiday, it is considered received on the next business day. Receipt is presumed three days following the date sent, if by regular United States mail.

(c) The department shall notify the applicant of the denial of an application for a certificate of registration or renewal application for a certificate of registration and the registrant of reprimands, suspensions, or revocations of certificates of registration by certified mail, return receipt requested.

#### *§36.4. Application for Certificate of Registration.*

[~~(a)~~] No metal recycling entity may operate until they have received a certificate of registration certifying a completed application and payment of fees. Any metal recycling entity that had an active free registration may continue to operate until that registration expires or for 60 days, whichever is earlier, before obtaining a certificate of registration which requires the payment of fees. A person who is required to register and who is not registered may apply for registration at any time.]

(a) [~~(b)~~] A certificate of registration [~~as required by subsection (a) of this section~~] may only be obtained through the department's online application process. [~~by submitting an Application for Certificate of Registration (MRB 1) to the department using online forms provided by the department via the program's website at [https://records.txdps.state.tx.us/DPS\\_WEB/MetalsNew/index.aspx](https://records.txdps.state.tx.us/DPS_WEB/MetalsNew/index.aspx).~~]

(b) [~~(e)~~] The application for certificate of registration must include [~~MRB 1 includes~~], but is not limited to, the following:

(1) Criminal history disclosure of all convictions and deferred adjudications for [~~each person providing a signature for the ap-~~]

plication,] each person listed as a business owner engaged in the regular course of business of a metal recycling entity on the application[, and each person designated as an on-site representative on the application].

(2) Proof of ownership [entity form] and current status as required by the department. Such proof includes, but is not limited to a current Certificate of Existence or Certificate of Authority from the Texas Office of the Secretary of State and a Certificate of Good Standing from the Texas Comptroller of Public Accounts.

(3) All fees required pursuant to §36.19 [§36.21] of this title (relating to Fees).

(c) [(d)] Applicants proposing to conduct [conducting] business at more than one location must complete an application [MRB 1] for each location [at which the applicant proposes to conduct business] and obtain a certificate of registration for each location [at which the applicant proposes to conduct business].

[(e) An applicant for a certificate of registration may not, within two years prior to the date of the application, have previously:]

[(1) had a certificate of registration revoked;]

[(2) obtained a certificate of registration by means of fraud, misrepresentation, or concealment of material fact;]

[(3) sold, bartered, or offered to sell or barter a certificate of registration; or]

[(4) violated §1956.040(b) of the Act.]

(d) [(f)] An applicant must submit a disclosure pursuant to [Statutory Agent Disclosure as described in] §36.5 of this title (relating to Statutory Agent Disclosure) along with the application [MRB 1].

(e) [(g)] The failure of an applicant to meet any of the conditions of subsections (a) - (d) [(a) - (f)] of this section will result in rejection [be grounds for denial] of the application as incomplete [under §1956.151 of the Act].

#### §36.5. Statutory Agent Disclosure.

(a) Statutory agent disclosure information [The Statutory Agent Disclosure (MRB 2) form] must be submitted [completed] by all applicants for each location at which the applicant is seeking to conduct business. [The statutory agent is the person to whom any legal notice may be delivered at each location.] Each person [or entity] applying for a certificate of registration must designate a natural person as the statutory agent and provide a physical address where that natural person may be located. This address may not be a post office box.

(b) Modification of the statutory agent disclosure information [A new MRB 2] must be submitted using the department's online application [filed] whenever the statutory agent is changed and all required fees must be paid pursuant to §36.19 of this title (relating to Fees) [changes].

[(e) A \$10 fee for filing will be charged for filing a form MRB 2 alone, without an initial application or application for renewal.]

#### §36.6. Change in Ownership.

(a) The [A registrant must notify the] department must be notified of any change in [each time the] ownership structure or registrant status within five business days of the effective date of the change. Notification must be through the department's online application. All fees required pursuant to §36.19 of this title (relating to Fees) must be paid at the time of notification [of a registrant changes by completing a Change in Ownership (MRB 3) form as soon as such a change has taken effect].

(b) The registrant must submit amended proof of ownership [entity form] and status as required by the department.

[(e) A \$10 fee for filing will be charged for filing a form MRB 3 alone, without an initial application or application for renewal.]

#### §36.7. Application Review.

(a) [Initial review.] If an incomplete application is received, [notice will be sent to] the applicant will be notified of the deficiency and provided 20 calendar days after receipt of notice to submit the missing information. If an applicant fails to furnish the missing information within 20 calendar days, the application will be rejected as incomplete [stating that the application is incomplete and specifying the information required for acceptance].

[(b) Incomplete application. The applicant has 20 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the documentation, the application will be deemed to be withdrawn by the applicant.]

(b) [(e)] [Complete application.] An application is complete when [it]:

(1) it contains all of the items required pursuant to [in] §36.4 of this title (relating to Application for Certificate of Registration);

(2) it conforms to the Act, this chapter, and the program's instructions;

(3) all fees have been paid pursuant to §36.19 [as provided by §36.21] of this title (relating to Fees); and

(4) all requests for additional information have been satisfied.

#### §36.9. Renewal of Certificate of Registration.

(a) To renew a certificate of registration, an application for renewal and the appropriate renewal fee must be submitted [a person must submit an Application for Renewal (MRB 4) to the department using online forms provided by the department via the program's website and by submitting the appropriate renewal fee as outlined in §36.21 of this title (relating to Fees)] prior to the certificate's expiration date but not more than 45 days before the expiration date of the current certificate of registration.

[(b) A person may not apply for a renewal of registration more than 45 days before the expiration date of the current certificate of registration.]

[(e) If a person submits a timely MRB 4, but the department has not acted upon it before the old certificate of registration expires, the old certificate of registration continues in effect until the MRB 4 is approved or denied by the department.]

(b) [(d)] A [person continuing to conduct business as a metal recycling entity whose] certificate of registration that has been expired less than one year may be renewed by submitting an application for renewal and the appropriate renewal fee pursuant to §36.19 of this title (relating to Fees) [for 90 days or less may renew the certificate by paying \$750 to the department].

[(e) A person continuing to conduct business as a metal recycling entity whose certificate of registration has been expired for more than 90 days but less than one year may renew the certificate by paying \$1,000 to the department.]

(c) [(f)] A certificate of registration that has expired for one year or more may not be renewed. An application for [A person continuing to conduct business as a metal recycling entity whose certificate of registration has been expired for one year or more may not renew the certificate. This person must obtain] a new certificate of registration

must be submitted according to the procedures pursuant to [utilizing the initial application procedure set forth in] §36.4 of this title (relating to Application for Certificate of Registration) and by paying the appropriate fees pursuant to §36.19 of this title.[-; submitting the initial application fee, and paying an additional administrative penalty of \$1,000.]

*§36.10. Denial of Application for Certificate of Registration.*

(a) The department may deny an application for a certificate of registration if:

(1) the applicant attempts to obtain a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(2) the applicant has sold, bartered, or offered to sell or barter a certificate of registration;

[(3) the applicant has previously been convicted of knowingly purchasing stolen regulated material pursuant to §1956.040(b) of the Act;]

[(4) the applicant fails to disclose the required persons involved in the regular course of the business of a metal recycling entity on the Application for Certificate of Registration (MRB 1) pursuant to §36.4(c) of this title (relating to Application for Certificate of Registration); or]

(3) [(5)] the applicant is ineligible under the requirements of §36.16 [has been convicted of a felony or misdemeanor offense as outlined in §36.15] of this title (relating to Disqualifying Offenses); or[-]

(4) the applicant's certificate of registration was revoked within two years prior to the date of application.

(b) Upon the denial of an application under this section, an applicant may request a hearing before the department pursuant to [as outlined in] §36.17 of this title (relating to Informal Hearings).

*§36.11. Reprimands and Suspensions of a Certificate of Registration.*

(a) The department may reprimand a person who is registered under the Act or suspend a certificate of registration of a person who is registered under the Act if the person:

(1) fails to submit the required reports to the department pursuant to §1956.036 of the Act [§36.14 of this title (relating to Reporting Requirements)];

(2) willfully or knowingly submits false, inaccurate, or incomplete information to the department on the reports submitted pursuant to §1956.036 of the Act [§36.14 of this title];

(3) fails to preserve the records required pursuant to §1956.034 of the Act; or

(4) violates the Act or this chapter.

(b) For the [a] first [time] violation of subsection (a) of this section, the person may receive a written reprimand in the form of a letter notifying the person of the violation and directing the person to immediately remedy the violation.

(c) For a second violation of subsection (a) of this section occurring within [the preceding] two years of an earlier violation for which a final order has been issued [year period], the person's certificate of registration may be suspended for a period [of] not to exceed three months.

(d) For a third violation of subsection (a) of this section occurring within [the preceding] two years of two earlier violations

for which final orders have been issued [year period], the person's certificate of registration may be suspended for a period [of] not to exceed six months.

(e) Upon receipt of a notice of reprimand or [the] suspension [of a certificate of registration] under this section, a person may request a hearing before the department pursuant to [as outlined in] §36.17 of this title (relating to Informal Hearings). The failure to timely appeal the proposed action will result in the issuance of a final order.

*§36.12. Revocation of a Certificate of Registration.*

(a) The department may revoke a certificate of registration of a person who is registered under the Act if the person:

(1) commits multiple violations of the same type pursuant to [as outlined in] §36.11(a) of this title (relating to Reprimands and Suspensions of a Certificate of Registration);

(2) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(3) sells, barter, or offers to sell or barter a certificate of registration;

[(4) is convicted of knowingly purchasing stolen regulated material pursuant to §1956.040(b) of the Act; or]

(4) [(5)] is convicted of a disqualifying felony or misdemeanor offense pursuant to §36.16 [as outlined in §36.15] of this title (relating to Disqualifying Offenses); or[-]

(5) submits to the department a payment that is dishonored, reversed, or otherwise insufficient or invalid.

(b) Upon receipt of notice of revocation under this section, a person may request a hearing before the department pursuant to [as outlined in] §36.17 of this title (relating to Informal Hearings).

*§36.13. Recertification after Revocation.*

(a) Except as provided in subsection (b) of this section, a [A] person whose certificate of registration has been revoked may not be recertified earlier than two [reapply prior to the passage of at least five] years from the date of revocation. [The previously revoked applicant must follow the procedures set forth in §36.4 of this title (relating to Application for Certificate of Registration) for new applications.]

(b) A person whose certificate of registration has been revoked for a dishonored or reversed payment, as provided under §36.12(a)(5) of this title (relating to Revocation of a Certificate of Registration), may reapply at any time. Approval of the application is contingent upon receipt of payment of the full amount due, including any additional processing fees resulting from the prior dishonored or reversed payment.

(c) A person whose certificate of registration has been revoked must follow the procedures pursuant to §36.4 of this title (relating to Application for Certificate of Registration) for new applications.

*§36.14. Reporting Requirements.*

[(a)] Not later than the second working day [seventh day] after the date of purchase or other acquisition of regulated material for which a record is required pursuant to [under] §1956.033 of the Act, the [a metal recycling] entity shall collect and submit to the department an electronic transaction report using the department's online reporting system. The report must contain the statutorily required documentation. In addition, the address of the individual from whom the regulated material is purchased must be a physical address. This address may not be a post office box. [a Report of Purchase for Metal Recycling Entity (MRB 5), containing:]

[(1) the place and date of the purchase;]



{(2) the name and physical address, the address may not be a post office box, of each individual from whom the regulated material is purchased or obtained;}

{(3) the identifying number of the seller's personal identification document;}

{(4) a written description made in accordance with the custom of the trade of the type and quantity of the purchased regulated material; and}

{(5) written documentation that the person is the legal owner of or is lawfully entitled to sell the regulated material.}

{(b) A completed MRB 5 shall be sent to the department by facsimile, electronic mail, or electronic upload via the program's website.}

{(c) If a metal recycling entity purchases bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as aluminum irrigation pipe, the entity shall notify the department of the purchase by the close of the next business day via facsimile, electronic mail, or by calling the department at the number listed on the program's website and shall file an MRB 5 with the department within five business days.}

§36.15. Exemption from Electronic Reporting.

(a) An entity unable to comply with the electronic reporting requirements may request an exemption from the requirement. The request must be in the form of an affidavit stating the entity does not have an available and reliable means of submitting the transaction report electronically. In addition, the request must clearly describe the entity's technological inadequacies, explain why those inadequacies cannot be remedied, and include documentation establishing the financial hardship associated with compliance.

(b) If an exemption is granted, the entity must file reportable transactions with the department on an approved form. The exemption will remain in effect for no longer than twelve months, beginning the first day of the month following the month the exemption was granted. A new exemption must be requested annually in writing.

(c) The department may rescind an exemption if the reasons underlying the exemption are found to no longer exist.

§36.16. Disqualifying Offenses.

(a) Pursuant to Texas Occupations Code, §53.021(a)(1), the department may revoke a certificate of registration or deny an application for a certificate of registration if the applicant, registrant and/or business owner thereof has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of a metal recycling entity.

(b) The department has determined the following types of offenses directly relate to the duties and responsibilities of metal recycling entities. A conviction for an offense within one or more of the following categories may result in the denial of an application (initial or renewal) for a certificate of registration or the revocation of a certificate of registration. The Texas Penal Code references provided in this section are for illustrative purposes and are not intended to exclude similar offenses in other state or federal codes. The types of offenses directly related to the duties and responsibilities of metal recycling entities include, but are not limited to, the following:

(1) Arson, Criminal Mischief, and other Property Damage or Destruction (Texas Penal Code, Chapter 28);

(2) Burglary and Criminal Trespass (Texas Penal Code, Chapter 30);

(3) Theft (Texas Penal Code, Chapter 31);

(4) Fraud (Texas Penal Code, Chapter 32);

(5) Bribery and Corrupt Influence (Texas Penal Code, Chapter 36);

(6) Perjury and Other Falsification (Texas Penal Code, Chapter 37); and

(7) Any violation of Texas Occupations Code, §1956.038 or §1956.040.

(c) A felony conviction for one of the offenses listed in subsection (b) of this section, a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or an offense listed in Texas Code of Criminal Procedure, Article 42.12, §3(g), is disqualifying for ten years from the date of the conviction, unless a full pardon has been granted.

(d) A misdemeanor conviction for one of the offenses listed in subsection (b) of this section or a substantially similar offense is disqualifying for five years from the date of conviction, unless a full pardon has been granted under the authority of a state or federal official and not only by statutory effect.

(e) For the purposes of this chapter, all references to conviction are to those for which the judgment has become final.

(f) A certificate of registration may be revoked for the imprisonment of the registrant following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for an offense that does not relate to the occupation of metal recycling and is disqualifying for five years from the date of the conviction.

(g) The department may consider the factors specified in Texas Occupations Code, §53.022 and §53.023 in determining whether to grant, deny, or revoke any certificate of registration.

§36.17. Informal Hearings.

(a) A person who receives notice of the department's intention to deny an [whose] application for a certification of registration to suspend or revoke a [is denied, whose] certificate of registration to be [is suspended or revoked, or who is] reprimanded, or to be prohibited from paying cash for a purchase of regulated material pursuant to §1956.036(e) of the Act, may appeal the decision by requesting an informal hearing. [is entitled to a hearing before the department, governed by Chapter 29 of this title (relating to Practice and Procedure) and Texas Government Code, Chapter 2001, if the person submits to the department a written request for the hearing in compliance with subsection (b) of this section.}

(b) The [A written] request for [a] hearing must be submitted by mail, facsimile, or electronic mail [e-mail], to the department in the manner provided on the department's metals recycling program website within 20 calendar days after receipt of notice of denial, suspension, revocation, or reprimand. If a written request for a hearing is not submitted [made] within 20 calendar days of the date notice was received, the [person has waived their] right to a hearing under this section or §36.18 of this title (relating to Hearings Before the State Office of Administrative Hearings) is waived.

(c) An informal hearing will be scheduled and conducted by the department's [manager of the program or the manager's] designee [in the manner prescribed by the department on the program's website].

(d) Following [After the conclusion of] the informal hearing, the hearing officer will issue a written statement of findings to the person at the [person's] address on file. The result may be appealed to the State Office of Administrative Hearings as provided in §36.18 of this title.

~~[(e) Within 20 calendar days of the date the statement of findings was received, the person may request an administrative hearing before the State Office of Administrative Hearings (SOAH).]~~

§36.18. Hearings Before the State Office of Administrative Hearings.

The determination of the informal hearing officer may be appealed by requesting an administrative hearing before the State Office of Administrative Hearings (SOAH) within 20 calendar days of receipt of the statement of findings. The request must be submitted in writing by mail, facsimile, or electronic mail, to the department in the manner provided on the metals recycling program's website.

[(a) A request for a hearing before the State Office of Administrative Hearings (SOAH) must be submitted in writing (by mail, facsimile, or e-mail) within 20 calendar days of the receipt of the statement of findings sent to the person's address on file.]

[(b) Procedures for a hearing before SOAH shall follow the process set forth in Texas Government Code, Chapter 2001.]

§36.19. Fees.

(a) The department has prescribed the following non-refundable fees for purposes of administering the Act:

(1) Initial Application. A \$500 fee is assessed for each application for a new certificate of registration. Applicants conducting business at more than one location must apply for a new certificate of registration and submit a \$500 fee for each location.

(2) Statutory Agent Disclosure. A \$10 fee is assessed each time statutory agent disclosure information is filed, without an initial application or application for renewal.

(3) Change in Ownership. A \$10 fee is assessed each time change of ownership information is filed, without an initial application or application for renewal.

(4) Renewal Certificate of Registration. A \$500 fee is assessed for each location renewing a certificate of registration in accordance with §36.9 of this title (relating to Renewal of Certificate of Registration). A certificate of registration which has been expired for 90 days or less may be renewed by submitting a renewal application using the department's online application and by paying \$750. A certificate of registration which has been expired for more than 90 days but less than one year may be renewed by submitting a renewal application using the department's online application and by paying \$1,000.

(5) Add or Change Location. A \$500 fee is assessed each time a metal recycling entity adds or changes a fixed location.

(b) Payment of fees shall be in the manner prescribed by the department. If payment is dishonored or reversed prior to issuance of the certificate, the application will be rejected as incomplete. If the certificate of registration has been issued prior to the payment being dishonored or reversed, revocation proceedings will be initiated pursuant to §36.12 of this title (relating to Revocation of Certificate of Registration). The department may dismiss a pending revocation proceeding upon receipt of payment of the full amount due, including any additional processing fees.

§36.20. Documentation on Fire-Salvaged Insulated Communications Wire.

Pursuant to §1956.032(a)(5) and (h) of the Act, a person attempting to sell insulated communications wire that has been burned wholly or partly to remove the insulation must display to the purchasing metal recycling entity documentation of the seller's ownership of the property at which the fire occurred or an affidavit from the owner reflecting the owner's consent for the material to be removed and sold.

§36.21. Military Exemption from Penalty for Failure to Renew in Timely Manner.

A person who holds a certificate of registration issued under the Act is exempt from any increased fee or other penalty imposed by the department for failing to renew the certificate of registration in a timely manner, if the person establishes to the satisfaction of the department the person failed to renew the certificate of registration in a timely manner because the person was on active duty in the United States armed forces serving outside this state.

§36.22. Extension of Certain Deadlines for Active Military Personnel.

A person who holds a certificate of registration issued under the Act, is a member of the state military forces or a reserve component of the armed forces of the United States, and is ordered to active duty by proper authority is entitled to an additional amount of time, equal to the total number of years or parts of years that the person serves on active duty, to complete any requirement related to the renewal of the person's certificate of registration.

§36.23. Alternative License Procedure for Military Spouse.

An applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States may apply for a certificate of registration under this section if the applicant:

(1) establishes to the satisfaction of the department that the applicant holds a current certificate of registration or the equivalent issued by another state with requirements substantially equivalent to the Act's requirements for the certificate of registration; or

(2) within the five years preceding the application date held the certificate of registration in this state that expired while the applicant lived in another state for at least six months.

§36.24. Adding or Changing Locations.

To conduct business at a new or additional location a registrant must apply for a certificate of registration for each location, pay all fees required pursuant to §36.19 of this title (relating to Fees), and obtain a certificate of registration for each location.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301592

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 424-5848

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**37 TAC §§36.15, 36.16, 36.19 - 36.21**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Public Safety (the department) proposes the repeal of §§36.15, 36.16 and 36.19 - 36.21, concerning Metals Registration.

Specifically, §36.16 is repealed as it is duplicative of statutory authority and therefore unnecessary. Section 36.19 is repealed

because dealers of crafted precious metals are no longer regulated by the department pursuant to 82nd Legislative Session, 2011, Senate Bill 694. The proposed repeal of §36.20 is necessary to eliminate paper forms. Section 36.15 and §36.21 are repealed to reorganize existing language and improve the clarity of Chapter 36.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be a reduction in metal theft and related crimes and improved efficiency in the administration of the statute through greater use of online portals, electronic data transmission and storage.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding these repeals.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work, and Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms.

Texas Government Code, §411.004(3), and Texas Occupations Code, §1956.013, are affected by this proposal.

*§36.15. Disqualifying Offenses.*

*§36.16. Additional and Accelerated Enforcement Actions.*

*§36.19. Temporary Location Registration of Dealers of Crafted Precious Metal.*

*§36.20. Forms.*

*§36.21. Fees.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301591

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: June 2, 2013

For further information, please call: (512) 424-5848



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

#### CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

##### 1 TAC §50.1

The Texas Ethics Commission (Commission) adopts an amendment to §50.1 to set the legislative per diem as required by the Texas Constitution, Article III, §24a. The amendment to §50.1 is adopted without changes to the proposed text as published in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1073). One proposal was considered by the Commission and the Commission voted to adopt the legislative per diem of \$150 for 2013.

Section 50.1 sets the per diem for members of the legislature and the lieutenant governor at \$150 for each day during the regular session and any special session.

No comments were received regarding the proposed rule during the comment period.

The amendment to §50.1 is adopted under the Texas Constitution, Article III, §24a, and the Government Code, Chapter 571, §571.062.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 2013.

TRD-201301543

Natalia Ashley

Special Counsel

Texas Ethics Commission

Effective date: May 6, 2013

Proposal publication date: February 22, 2013

For further information, please call: (512) 463-5800



### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES

##### SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §§355.8043 and 355.8068 - 355.8072, con-

cerning the methodology by which HHSC calculated supplemental Medicaid Upper Payment Limit (UPL) payments for inpatient, outpatient, and physician services. The repeals are adopted without changes to the proposal published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 552).

##### Background and Purpose

HHSC adopts the repeal of rules that establish the methodology by which HHSC calculated supplemental Medicaid Upper Payment Limit (UPL) payments for inpatient, outpatient, and physician services. This action is part of the Centers for Medicare and Medicaid Services (CMS)-approved process to transition to a new supplemental payment process in a managed care environment under the Texas Healthcare Transformation and Quality Improvement Program 1115 Waiver.

CMS approved a five-year 1115 demonstration waiver designed to build on existing Texas health care reforms and to redesign health care delivery in Texas. The waiver establishes goals to improve the experience of care and the health of populations, while reducing the cost of health care without compromising quality. The waiver replaces hospital and physician supplemental funding (the former UPL programs), provides incentive payments for health care improvements, and directs more funding to hospitals that serve large numbers of uninsured patients.

The waiver creates two funding pools to replace UPL payments: the Uncompensated Care (UC) and the Delivery System Reform Incentive Payment (DSRIP) pools. UC pool payments are designed to help offset the costs of uncompensated care provided by a hospital or by other Medicaid providers. DSRIP pool payments are incentive payments to hospitals and other Medicaid providers that develop programs or strategies to enhance access to health care, the quality of care, and the health of the patients and families served.

With the implementation of new UC and DSRIP pool payments under the 1115 waiver, HHSC is repealing §§355.8043 and 355.8068 - 355.8072, because rules governing the methodology by which HHSC calculated payments for the former UPL program are no longer needed.

##### Comments

The 30-day comment period ended on March 10, 2013. During this period, HHSC did not receive comments regarding these rule repeals.

#### DIVISION 3. PHYSICIAN SERVICES

##### 1 TAC §355.8043

##### Statutory Authority

The repeals are adopted under Texas Government Code §531.0055(e) and §531.033, which provide the Executive Commissioner of HHSC with broad rulemaking authority; and

Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 2013.

TRD-201301520

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 6, 2013

Proposal publication date: February 8, 2013

For further information, please call: (512) 424-6900



## **DIVISION 4. MEDICAID HOSPITAL SERVICES**

### **1 TAC §§355.8068 - 355.8072**

#### **Statutory Authority**

The repeals are adopted under Texas Government Code §531.0055(e) and §531.033, which provide the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 2013.

TRD-201301521

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 6, 2013

Proposal publication date: February 8, 2013

For further information, please call: (512) 424-6900



## **TITLE 7. BANKING AND SECURITIES**

### **PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER**

#### **CHAPTER 89. PROPERTY TAX LENDERS**

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §89.207, concerning Files and Records Required, and §89.401, concerning Branch Networks, relating to subsequent transfers of property tax loans. The commis-

sion adopts the amendments to §89.207 and §89.401 without changes to the proposed text as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1289).

The commission received no written comments on the proposal.

During recent legislative hearings, stakeholders expressed concerns about unlicensed activity by subsequent holders of property tax loans. The OCCC believes that the statute's applicability to subsequent holders is clear, as Texas Finance Code, §351.051(a) states that a license is required to "contract for, charge, or receive, *directly or indirectly*, in connection with a property tax loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense...."

The OCCC has issued a bulletin to assist in the clarification of this issue (available at: <http://www.occc.state.tx.us/>). The bulletin states that a company must hold a property tax lender license with the OCCC in order for a property tax loan to be transferred, assigned, or sold to the company. A license is also required to accept any charges in connection with a property tax loan or to collect on the loan.

To provide further guidance to stakeholders, the OCCC has developed these rule amendments related to recordkeeping and branch locations. The agency circulated an early draft of the changes to interested stakeholders and incorporated several suggestions from stakeholders.

The purpose of the adopted amendments to §89.207, Files and Records Required, is to ensure that the proper transfer, assignment, and sale documentation is maintained so that the agency can verify through the examination process that property tax loans are transferred, assigned, or sold to authorized parties under Texas Finance Code, §351.051.

Specifically, the amendments add paragraph (5) to §89.207, requiring the retention of records regarding the transfer, assignment, or sale of property tax loans. A register must also be maintained including: the name of the borrower, the loan number, the date of the transaction, and the name, address, and license or exemption information of the party to which the accounts are assigned, transferred, or sold. A companion amendment is contained in the addition of paragraph (2)(L) to reflect that these records must also be kept in each individual borrower's property tax loan transaction file. In addition, the remaining paragraphs of §89.207 have been renumbered accordingly.

The adopted amendments to §89.401, Branch Networks, add the verbs "transact," "service," and "hold," to better track the statute and more accurately reflect all of the actions that require a license. Additionally, the changes to §89.401 include technical corrections providing parallel terms and phrases to those used during the rule review of this chapter completed last year.

#### **SUBCHAPTER B. AUTHORIZED ACTIVITIES**

##### **7 TAC §89.207**

These amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007, grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301582

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: May 9, 2013

Proposal publication date: March 1, 2013

For further information, please call: (512) 936-7621



## SUBCHAPTER D. LICENSE

### 7 TAC §89.401

These amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007, grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301583

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: May 9, 2013

Proposal publication date: March 1, 2013

For further information, please call: (512) 936-7621



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 163. LICENSURE

##### 22 TAC §163.6, §163.7

The Texas Medical Board (Board) adopts amendments to §163.6, concerning Examinations Accepted for Licensure, and §163.7, concerning Ten Year Rule, without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1629) and will not be republished.

The amendments to §163.6 and §163.7 revise the rule relating to licensure examinations so that the rules are consistent with the statute regarding passage of licensure examinations within a seven-year time period and demonstration of competence in the ten-year period preceding application for license.

No comments were received regarding adoption of the rules.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 2013.

TRD-201301532

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 6, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 305-7016



## CHAPTER 172. TEMPORARY AND LIMITED LICENSES

### SUBCHAPTER B. TEMPORARY LICENSES

#### 22 TAC §172.8

The Texas Medical Board (Board) adopts amendments to §172.8, concerning Faculty Temporary License, without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1631) and will not be republished.

The amendment clarifies that time spent under a Faculty Temporary License (FTL) may satisfy the ten-year rule requirement for specialty training.

No comments were received regarding adoption of the rule.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rule and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §153.001, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 2013.

TRD-201301533

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 6, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 305-7016



## CHAPTER 175. FEES AND PENALTIES

## 22 TAC §175.5

The Texas Medical Board (Board) adopts amendments to §175.5, concerning Payment of Fees or Penalties, without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1632) and will not be republished.

The amendment provides that if an applicant or licensee dies more than 90 days after having paid a fee, survivors may submit a written request for a refund demonstrating good cause for a pro-rated refund.

No comments were received regarding adoption of the rule.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §153.001, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 2013.

TRD-201301534

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 6, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 305-7016



## CHAPTER 187. PROCEDURAL RULES

### SUBCHAPTER F. TEMPORARY SUSPENSION AND RESTRICTION PROCEEDINGS

#### 22 TAC §187.57

The Texas Medical Board (Board) adopts amendments to §187.57, concerning Charge of the Disciplinary Panel, without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1633) and will not be republished.

The amendment adds missing language to correct a typographical error that was adopted previously by the Board.

No comments were received regarding adoption of the rule.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §153.001, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 2013.

TRD-201301535

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 6, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 305-7016



## CHAPTER 196. VOLUNTARY RELINQUISHMENT OR SURRENDER OF A MEDICAL LICENSE

#### 22 TAC §196.2

The Texas Medical Board (Board) adopts amendments to §196.2, concerning Surrender Associated with Disciplinary Action, without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1634) and will not be republished.

The amendment corrects language to indicate that a licensee may agree to surrender license in lieu of further investigation or a hearing.

No comments were received regarding adoption of the rule.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §153.001, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 2013.

TRD-201301536

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 6, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 305-7016



## CHAPTER 197. EMERGENCY MEDICAL SERVICE

#### 22 TAC §197.3

The Texas Medical Board (Board) adopts amendments to §197.3, concerning Off-Line Medical Director, without changes to the proposed text as published in the March 8, 2013, issue

of the *Texas Register* (38 TexReg 1634) and will not be republished.

The amendment provides that a physician may not be an off-line medical director if the physician has been suspended or revoked for cause by any governmental agency or the physician has been excluded from Medicare, Medicaid, or CHIP.

No comments were received regarding adoption of the rule.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §153.001, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 2013.

TRD-201301537

Mari Robinson, J.D.

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Texas Medical Board

Effective date: May 6, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 305-7016



## PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

### CHAPTER 575. PRACTICE AND PROCEDURE

#### 22 TAC §575.10

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §575.10, concerning Costs of Administrative Hearings, without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 575) and will not be republished.

The Board adopts the amendment to §575.10 to more specifically define the costs that the Board assesses against opposing parties that lose a hearing at the State Office of Administrative Hearings (SOAH) or choose to appeal a SOAH ruling, in order to make the rule conform more closely to §2001.059 and §2001.177 of the Administrative Procedure Act, Texas Government Code. While the previous version of the rule allowed the Board to assess all hearing costs against a party who loses at SOAH, under the adopted amended rule, the Board may assess only transcript costs against the losing party at SOAH or the party that chooses to appeal a SOAH decision, as is explicitly allowed by §2001.059 and §2001.177 of the Administrative Procedure Act. The adopted amendment also makes the rule apply to individuals with contested cases before SOAH involving licensure eligibility, as well as those with cases involving disciplinary action, because there is no difference between these types of cases with regard to the cost of creating the transcript of a SOAH hearing or the applicability of §2001.059 and §2001.177 of the Administrative Procedure Act.

The Board did not receive any comments on the proposed amendments.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.154(a), which states that the board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter. The amendment is also adopted under the authority of the Administrative Procedure Act, Government Code, §2001.059(b), which states that a state agency may assess the cost of a transcript in a contested case to one or more parties, and §2001.177, which states that a state agency by rule may require a party who appeals a final decision in a contested case to pay the cost of preparation of the record of the agency proceeding that is required to be sent to the reviewing court.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2013.

TRD-201301601

Loris Jones

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Texas Board of Veterinary Medical Examiners

Effective date: May 12, 2013

Proposal publication date: February 8, 2013

For further information, please call: (512) 305-7563



#### 22 TAC §575.20

The Texas Board of Veterinary Medical Examiners (Board) adopts new §575.20, concerning Board Proceedings Relating to Licensure Eligibility, without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 576) and will not be republished.

The Board adopts §575.20 to provide an informal process to decide licensure eligibility issues. The process parallels the informal process the Board uses to determine disciplinary issues, allowing a subcommittee of the Board to determine whether an applicant is eligible for licensure and to offer agreed licensure orders. The intent of the Board in adopting this rule is to create a faster and more efficient process for resolving licensure issues.

Under the adopted rule, if the subcommittee determines that an applicant is ineligible for licensure or the applicant fails to sign an agreed licensure order offered by the subcommittee, the applicant is scheduled for a hearing before the State Office of Administrative Hearings (SOAH), in accordance with the Government Code, Administrative Procedure Act. If the applicant signs an agreed licensure order, the full Board will review it and vote to approve, modify the order, or reject it. If the Board rejects an agreed order, the applicant is scheduled for a hearing before SOAH. If an applicant is denied licensure by a final order of the Board following a SOAH hearing, the adopted rule states that the applicant may not reapply for licensure for two years from the date of that order, to avoid wasting state resources by continuously re-litigating cases brought by applicants that are ineligible for licensure.

The Board did not receive any comments on the proposed new rule.



The new rule is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.408(a), which states that the Board shall adopt rules setting out the procedures governing the informal disposition of a contested case and the informal process for considering licensure issues.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2013.

TRD-201301602

Loris Jones

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Texas Board of Veterinary Medical Examiners

Effective date: May 12, 2013

Proposal publication date: February 8, 2013

For further information, please call: (512) 305-7563



## 22 TAC §575.28

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §575.28, concerning Complaints--Investigations, with a non-substantive change to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 578). The text of the rule will be republished.

The Board adopts the amendment §575.28 to remove the requirement that the board secretary review disciplinary cases involving medical issues, in order to allow any veterinarian member of the Board to serve on the committee that reviews the cases involving medical issues. The adopted amendment will allow the board president more flexibility in making appointments to the reviewing committee by increasing the number of board members eligible to review the medical cases. Medical case review requires a significant time commitment from the veterinarian board members, and the adopted amendment would allow the board president to spread the burden of medical case review more evenly among the veterinarian board members.

The Board did not receive any comments on the proposed amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.408, which states that the Board shall adopt rules setting out the procedures governing the informal disposition of a contested case.

### §575.28. *Complaints--Investigations.*

Investigation of complaints.

(1) Policy. The policy of the Board is that the investigation of complaints shall be the primary concern of the Board's enforcement program, and shall take precedence over all other elements of the enforcement program, including compliance inspections.

(2) Priority. The Board shall investigate complaints based on the following allegations, in order of priority:

(A) acts or omissions, including those related to substance abuse, that may constitute a continuing and imminent threat to the public welfare;

(B) acts or omissions of a licensee that resulted in the death of an animal;

(C) acts or omissions of a licensee that contributed to or did not correct the illness, injury or suffering of an animal; and

(D) all other acts and omissions that do not fall within subparagraphs (A) - (C) of this paragraph.

(3) Upon receipt of a complaint, a letter of acknowledgment will be promptly mailed to the complainant.

(4) Complaints will be reviewed every thirty (30) days to determine the status of the complaint. Parties to a complaint will be informed on the status of a complaint at approximately 45 day intervals.

(5) Upon receipt of a complaint, the director of enforcement, or their designee, will review it and may interview the complainant to obtain additional information. If the director of enforcement concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the Board, or is without merit, the director of enforcement shall recommend through the general counsel to the executive director that an investigation not be initiated. If the executive director concurs with the recommendation, the complainant will be so notified. If the executive director does not concur with the recommendations, an investigation will be initiated.

(6) The director of enforcement will assign a member of board staff to investigate the complaint. A summary of the allegations in the complaint will be sent to the licensee who is the subject of the complaint, along with a request that the licensee respond in writing within 21 days of receipt of the request. The licensee will also be asked to provide a copy of the relevant patient records with the response. The licensee is entitled on request to review the complaint submitted to the Board unless board staff determines that allowing the licensee to review the complaint would jeopardize an active investigation.

(7) After the licensee's response to the complaint is received, board staff shall send a copy of the licensee's response to the complainant, along with notification that the complainant may submit additional comments and other evidence, if any, at any time during the investigation to the Board. Board staff shall provide any response provided by the complainant to the licensee, unless board staff determines that allowing the licensee to review the response from the complainant would jeopardize an active investigation, and provide a single opportunity for the licensee to respond to the Board within ten days of receipt. No further responses from either the licensee or the complainant will be provided to either party.

(8) Further investigation may be necessary to corroborate the information provided by the complainant and the licensee. During the investigation, board staff shall attempt to interview by telephone the complainant, and if unable to contact the complainant shall document such in the file. Other persons, such as second opinion or consulting veterinarians, may be contacted. Board staff may request additional medical opinions, supporting documents, and interviews with other witnesses.

(9) Upon the completion of an investigation, board staff shall prepare a report of investigation (ROI) for review by the director of enforcement.

(A) If the director of enforcement determines from the ROI that the probability of a violation involving medical judgment or practice exists, the director of enforcement will forward the ROI to the executive director. If the executive director concurs that the probability

of a violation involving medical judgment or practice exists, the director of enforcement shall forward a copy of the ROI and complaint file to two veterinary licensee board members (veterinarian members) who will determine whether or not the complaint should be closed, further investigation is warranted, or if the licensee and complainant should be invited to respond to the complainant at an informal conference at the board offices.

(B) If the director of enforcement determines from the ROI that the probable violation does not involve medical judgment or practice (example: administrative matters such as continuing education and federal and state controlled substances certificates), the director of enforcement shall forward the complaint file to a committee of the executive director, director of enforcement, member of board staff assigned to investigate the complaint, and general counsel (the "staff committee"), which shall determine whether or not the complaint should be dismissed, investigated further, or settled.

(C) If the veterinarian members determine that a violation has not occurred, the executive director or the executive director's designee, shall notify the complainant and licensee in writing of the conclusion and that the complaint is dismissed.

(D) If the veterinarian members conclude that a probable violation(s) exists, the executive director or the executive director's designee, shall invite the licensee and complainant, in writing, to an informal conference to discuss the complaint made against the licensee. If the veterinarian members cannot agree to dismiss or refer the complaint to an informal conference, the complaint will be automatically referred to an informal conference. The letter invitation to the licensee must include a list of the specific allegations of the complaint.

(E) A complaint considered by the staff committee shall be referred to an informal conference if:

- (i) the staff committee determines that the complaint should not be dismissed or settled;
- (ii) the staff committee is unable to reach an agreed settlement; or
- (iii) the licensee who is the subject of the complaint requests that the complaint be referred to an informal conference.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2013.

TRD-201301603

Loris Jones

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Texas Board of Veterinary Medical Examiners

Effective date: May 12, 2013

Proposal publication date: February 8, 2013

For further information, please call: (512) 305-7563



## 22 TAC §575.29

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §575.29, concerning Informal Conferences, without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 579) and will not be republished.

The Board adopts an amendment to §575.29 to remove the requirement that the board secretary serve on the Enforcement

Committee, which reviews disciplinary cases during informal settlement conferences to determine whether a violation of either the Board's rules or the Veterinary Licensing Act has occurred. The adopted amendment allows the board president more flexibility in making appointments to the Enforcement Committee, and increases the number of board members eligible to serve on the Enforcement Committee. The veterinarian board members who serve on the Enforcement Committee also review all disciplinary cases that involve issues of medical judgment or practice under §575.28, which sets out the procedures for review of cases involving medical issues that are under investigation by the Board. The adopted amendment to §575.29 makes clear that the veterinarian members of the Enforcement Committee are the same veterinarian board members that perform medical case reviews, by including a reference to §575.28. The Board intends the amendments to allow the board president to allocate the burden of serving on the Enforcement Committee more evenly among all the veterinarian members of the Board to prevent any individual member from becoming exhausted or burned out by the significant time commitment required of those serving on the Enforcement Committee and performing medical case reviews.

The Board did not receive any comments on the proposed amendments.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.205, which states that the Board shall adopt rules relating to the investigation of complaints filed with the Board; and §801.408(a), which states that the Board shall adopt rules setting out the procedures governing the informal disposition of a contested case under §2001.056, Texas Government Code, and informal proceedings held in compliance with §2001.054, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2013.

TRD-201301604

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: May 12, 2013

Proposal publication date: February 8, 2013

For further information, please call: (512) 305-7563



## 22 TAC §575.30

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §575.30, concerning Contested Case Hearing at SOAH, with a non-substantive change to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 580). The text of the rule will be republished.

The adopted amendment to §575.30 clarifies the description of the process by which the Board schedules and conducts hearings before SOAH. It also makes clear that it applies to licensure cases against individuals who have been found ineligible for licensure, as well as to disciplinary cases. The

adopted amendment also modernizes §575.30 by replacing references to a complaint affidavit, which the Board used as part of its orders prior to the advent of SOAH, with the notice of hearing used under current SOAH procedure and required by §2001.052 and §2001.054 of the Administrative Procedure Act, Government Code.

The Board also adopts the amendment to add a new subsection (h), which requires that when a party to a contested case offers proposed findings of fact, the Administrative Law Judge (ALJ) will rule on each proposed finding, in keeping with §2001.141(e) of the Administrative Procedure Act. By requesting a ruling on proposed findings of fact, the Board hopes to acquire more insight into the ALJ's reasoning behind the holding and to give the ALJ an opportunity to consider and reflect on what the Board believes it has proved in the contested case hearing prior to making a proposal for decision.

The Board did not receive any comments on the proposed amendments.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

#### *§575.30. Contested Case Hearing at SOAH.*

(a) If a licensee or applicant for licensure declines to sign a proposed agreed order, or if the licensee or applicant for licensure fails to respond timely to a proposed agreed order, or if the Board rejects a proposed agreed order, the board staff may proceed with the filing of a contested case with the State Office of Administrative Hearings (SOAH). At least ten (10) days prior to a scheduled hearing, the notice of hearing shall be served on the licensee or applicant for licensure as set out in subsection (g)(1) of this section. Except in cases of temporary suspension, a notice of hearing shall be filed only after notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's or applicant for licensure's address of record and the licensee or applicant for licensure has an opportunity to show compliance with the law for the retention of a license as provided in §2001.054 of the APA, and §801.408 of the Veterinary Licensing Act.

(b) SOAH hearings of contested cases shall be conducted in accordance with the Act, the APA, SOAH rules, and board rules. In the event of a conflict, the Act shall prevail over any other statute or rule, the APA shall prevail over SOAH rules, and SOAH rules shall prevail over the rules of the Board, except when board rules provide the Board's interpretation of the Act. If SOAH rules are silent on an issue addressed by this subchapter, the provisions of this subchapter shall be applied.

(c) The administrative law judge (ALJ) has the authority under SOAH rules, Chapter 155, to issue orders, to regulate the conduct of the proceeding, rule on motions, establish deadlines, clarify the scope of the proceeding, schedule and conduct prehearing and posthearing conferences for any purpose related to any matter in the case, set out additional requirements for participation in the case, and take any other steps conducive to a fair and efficient process in the contested case, including referral of the case to a mediated settlement conference or other appropriate alternative dispute resolution procedure as provided by Chapter 2003 of the Government Code.

(d) All documents are to be filed at SOAH after it acquires jurisdiction. Copies of all documents filed at SOAH shall be contemporaneously filed with the Board.

(e) Because of the often voluminous nature of the records properly received into evidence by the ALJ, the party introducing

such documentary evidence should paginate each exhibit and/or flag pertinent pages in each exhibit in order to expedite the hearing and the decision-making process.

(f) In accordance with the provisions of the APA, Section 2001.058(e), a party may file an interlocutory or interim appeal to the Board requesting that the Board vacate or modify an order issued by an ALJ.

(g) Notice of SOAH hearing; continuance and default.

(1) The Board shall provide notice of the time, date, and place of the hearing to the licensee or applicant for licensure. The notice shall include the requirements set forth in Section 2001.052 of the APA. The Board shall send notice of a contested case hearing before SOAH to the licensee's or applicant for licensure's last known address as evidenced by the records of the Board. Respondent is presumed to have received proper and timely notice three (3) days after the notice is sent to the last known address as evidenced by the records of the Board. Notice shall be given by first class mail, certified or registered mail, or by personal service.

(2) If the licensee or applicant for licensure fails to timely enter an appearance or answer the notice of hearing, the Board is entitled to a continuance at the time of the hearing. If the licensee or applicant for licensure fails to appear at the time of the hearing, the Board may move either for dismissal of the case from the SOAH docket, or request that the ALJ issue a default proposal for decision in favor of the Board.

(3) Proof that the licensee or applicant for licensure has evaded proper notice of the hearing may also be grounds for the Board to request dismissal of the case or issuance of a default proposal for decision in favor of the Board.

(h) If a party submitted proposed findings of fact, the proposal for decision shall include a ruling on each proposed finding by the ALJ, including a statement as to why any proposed finding was not included in the proposal for decision.

(i) After receiving the ALJ's findings of fact and conclusions of law in the proposal for decision, the Board shall rule on the merits of the charges and enter an order. The Board by order may find that a violation has occurred and impose disciplinary action, or find that no violation has occurred. The Board shall promptly advise the complainant of the Board's action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2013.

TRD-201301605

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: May 12, 2013

Proposal publication date: February 8, 2013

For further information, please call: (512) 305-7563

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#### **22 TAC §575.50**

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §575.50, concerning Criminal Convictions, without changes to the proposed text as published in the

February 8, 2013, issue of the *Texas Register* (38 TexReg 582) and will not be republished.

The Board adopts the amendment §575.50 to add a reference to equine dental provider licensees to subsection (a) in order to ensure that the crimes listed in the rule are considered "related to the practice" for both equine dentistry as well as veterinary medicine for purposes of determining whether a licensee should be disciplined by the Board for having committed one of the listed crimes. Equine dentistry is already referenced in subsection (e), so the Board adopts the amendment to clarify rather than change the Board's interpretation of the rule as it applies to equine dental provider licensees. The adopted amendment is necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers.

The Board did not receive any comments on the proposed amendments.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, and §801.151(c)(1), which states that the Board shall adopt rules to protect the public.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2013.

TRD-201301606

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: May 12, 2013

Proposal publication date: February 8, 2013

For further information, please call: (512) 305-7563



## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT**

#### **CHAPTER 53. FINANCE**

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 24, 2013 adopted amendments to §§53.2, 53.3, 53.30, 53.60, and 53.90, concerning Fees. Section 53.3 is adopted with changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9852). Sections 53.2, 53.30, 53.60, and 53.90 are adopted without changes and will not be republished.

The change to §53.3, concerning Combination Hunting and Fishing License Packages, adds the word "senior" before the phrase "fishing license" in paragraphs (4) - (6) to maintain parallel construction.

The amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to

re-adopt, adopt with changes, or repeal each rule as a result of the review.

The amendment to §53.2, concerning License Issuance Procedures, Fees, Possession and Exemption Rules, alters subsection (c) to clarify that the term "electronically," when used in the context of license and stamp issuance, includes issuance on-line as well as by telephone. The amendment also eliminates references to "designated representatives" with respect to electronic sales. The department does not utilize designated representatives to sell licenses over the phone or on-line.

The amendment to §53.3, concerning Combination Hunting and Fishing License Packages, alters paragraphs (4) - (6) and (8) to clarify that the hunting license included in the resident senior combination hunting and freshwater fishing package, the resident senior combination hunting and saltwater fishing package, the resident senior combination hunting and "all water" fishing package, and the resident senior super combination hunting and "all water" fishing package is a senior hunting license.

The amendment to §53.30, concerning Facility Admission and Use Fees, removes Old Tunnel Wildlife Management Area (WMA), Mason Mountain WMA, and Parrie Haynes Ranch from the subchapter and eliminates the fees established for public use of those facilities. Old Tunnel has been transferred to the inventory of state parks and is no longer a WMA; entrance and user fees for state parks are addressed in Chapter 59. Prior to 2010, Mason Mountain WMA was not operated as a federal project under the Federal Aid in Wildlife Restoration Act (commonly referred to as the Pittman-Robertson Act or "PR"). In order to accommodate budgetary restraints with respect to the availability of appropriated state funds, the department determined that it was necessary to operate Mason Mountain WMA as a PR project. Under the rules of the federal program, "program income" (defined as "gross income received by the grantee directly generated by a grant-supported activity or earned only as a result of the grant agreement during the grant period") is counted against the federal share of the project cost, which increases the amount of state dollars that must be spent to gain federal matching funds. Therefore, eliminating the fees for Mason Mountain WMA will result in the department obtaining the maximum amount of federal funds for operation of the WMA. The Parrie Haynes Ranch property is no longer being leased by the department and there is therefore no reason to retain the fee rules for the property.

The amendment to §53.60, concerning Stamps, inserts language to reflect the correct name of the saltwater sportfishing stamp.

The amendment to §53.90, concerning Display of Registration Validation Sticker, restructures subsection (a) to provide more detail as to the types of vessels and persons that are exempt from registration display requirements. Under Parks and Wildlife Code, §31.022(b), the department may exempt a vessel if it belongs to a class of vessels that would be exempt from numbering under a numbering system of an agency of the federal government if it were subject to federal law. The intent of the current rule is to exempt vessels that are not required to be numbered by the United States Coast Guard (USCG). In order to be clear as to what classes of vessels are exempt from state display requirements, the amendment identifies specific classes of vessels that are exempt from USCG requirements.

The department received one comment opposing adoption of the rules as proposed. The commenter articulated a reason or ratio-

nal for opposition. That comment, accompanied by the department's response follows:

One commenter opposed adoption and stated that the word "senior" should precede the phrase "fishing license" in §53.3(4) - (6). The department agrees with the comment and has made changes accordingly.

The department received four comments supporting adoption of the amendments as proposed.

No groups or associations commented concerning adoption of the amendments as proposed.

## SUBCHAPTER A. FEES

### DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

#### 31 TAC §53.2, §53.3

The amendments are adopted under the authority of Parks and Wildlife Code, §12.701, which allows the department to authorize the issuance of a license, stamp, permit, or tag by a license deputy; and §50.001, which authorizes the department to issue combination hunting and fishing licenses and license packages.

#### *§53.3. Combination Hunting and Fishing License Packages.*

Combination hunting and fishing license packages may be priced at an amount less than the sum of the license and stamp prices of the individual licenses and stamps included in the package.

(1) Resident combination hunting and freshwater fishing package--\$50. Package consists of a resident hunting license, a resident fishing license and a freshwater fish stamp;

(2) Resident combination hunting and saltwater fishing package--\$55. Package consists of a resident hunting license, a resident fishing license, a saltwater sportfishing stamp, and a red drum tag;

(3) Resident combination hunting and "all water" fishing package--\$60. Package consists of a resident hunting license, a resident fishing license, a freshwater fish stamp, a saltwater sportfishing stamp, and a red drum tag;

(4) Resident senior combination hunting and freshwater fishing package--\$16. Package consists of a senior resident hunting license, a senior resident fishing license and a freshwater fish stamp;

(5) Resident senior combination hunting and saltwater fishing package--\$21. Package consists of a senior resident hunting license, a senior resident fishing license, a saltwater sportfishing stamp, and a red drum tag;

(6) Resident senior combination hunting and "all water" fishing package--\$26. Package consists of a senior resident hunting license, a senior resident fishing license, a freshwater fish stamp, a saltwater sportfishing stamp, and a red drum tag;

(7) Resident super combination hunting and "all water" fishing package--\$68. Package consists of a resident hunting license, a migratory game bird stamp, an upland game bird stamp, an archery stamp, a resident fishing license, a freshwater fish stamp, and a saltwater sportfishing stamp with a red drum tag;

(8) Resident senior super combination hunting and "all water" fishing package--\$32. Package consists of a senior resident hunting license, a migratory game bird stamp, an upland game bird stamp, an archery stamp, a senior resident fishing license, a freshwater fish stamp, and a saltwater sportfishing stamp with a red drum tag;

(9) Resident disabled veteran super combination hunting and "all water" fishing package--\$0. Package consists of a resident hunting license, a migratory game bird stamp, an upland game bird stamp, an archery stamp, a resident fishing license, a freshwater fish stamp, and a saltwater sportfishing stamp with a red drum tag;

(10) Texas resident active duty military super combination hunting and "all water" fishing package--\$0. Package consists of a resident hunting license, an upland game bird stamp, a migratory game bird stamp, an archery stamp, a resident fishing license, a freshwater fish stamp, and a saltwater sportfishing stamp with a red drum tag; and

(11) Replacement combination or replacement super combination packages--\$10 except for a replacement disabled veteran super combination hunting and "all water" fishing package or a Texas resident active duty military super combination hunting and "all water" fishing package, which shall be replaced at no charge.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301573

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: May 9, 2013

Proposal publication date: December 21, 2012

For further information, please call: (512) 389-4775



### DIVISION 2. FACILITY ADMISSION AND USE FEES

#### 31 TAC §53.30

The amendment is adopted under the authority of Parks and Wildlife Code, §11.027, which authorizes the commission to establish a fee for entering, reserving, or using a facility or property owned or managed by the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301574

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: May 9, 2013

Proposal publication date: December 21, 2012

For further information, please call: (512) 389-4775



## SUBCHAPTER B. STAMPS

#### 31 TAC §53.60

The amendment is adopted under the authority of Parks and Wildlife Code, §46.002, which establishes statutory exceptions to fishing license requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301575

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: May 9, 2013

Proposal publication date: December 21, 2012

For further information, please call: (512) 389-4775



## SUBCHAPTER E. DISPLAY OF BOAT REGISTRATION

### 31 TAC §53.90

The amendment is adopted under the authority of Parks and Wildlife Code, §31.022, which authorizes the department to exempt certain vessels from the numbering requirements established under Chapter 31.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301576

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: May 9, 2013

Proposal publication date: December 21, 2012

For further information, please call: (512) 389-4775



## SUBCHAPTER A. FEES DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

### 31 TAC §§53.5 - 53.7

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 24, 2013 adopted amendments to §§53.5 - 53.7, concerning Fees, without changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9856).

The amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The amendment to §53.5, concerning Recreational Hunting Licenses, Stamps and Tags, establishes the fee for a replacement senior resident hunting license or replacement youth hunting license at \$6. Parks and Wildlife Code, §42.017(d), provides that the fee for duplicate licenses or tags issued under Chapter 42 is \$5 or an amount set by the commission, whichever is more.

Under current §53.5(a)(4), the fee for a replacement hunting license is \$10. The department has determined that the fee to replace a license should not be more than the license originally cost to obtain.

The amendment to §53.6, concerning Recreational Fishing Licenses, Stamps, and Tags, establishes the fee for a replacement special resident all-water fishing package at \$6. Parks and Wildlife Code, §46.006(a), provides that the fee for duplicate licenses or tags issued under authority of Chapter 46 is \$5 or an amount set by the commission, whichever is more. Under §53.6(c)(14), the fee to replace a fishing license or package is \$10. The department has determined that the fee to replace a license should not be more than the license originally cost to obtain. The amendment also makes nonsubstantive changes in subsections (b)(2) and (c)(7) for purposes of grammatical consistency.

The amendment to §53.7, concerning Furbearing Animal Licenses and Permits, corrects the fee amount for the nonresident wholesale dealer's license to reflect the minimum fee required by statute. Under Parks and Wildlife Code, §71.009, the fee for a nonresident wholesale dealer's license is \$400.75 or an amount set by the commission, whichever is higher. In 2007, the department received a petition for rulemaking from the Texas Fur Trappers and Fur Hunters Association that requested a reduction of the nonresident wholesale dealer's license fee as an incentive to encourage nonresident interest in the furbearing animal trade in Texas. In response, the department promulgated a fee reduction to \$250. In 2009, as part of a general fee increase for all licenses and permits, the fee amount was increased to \$263. The legislative rule review revealed the discrepancy between the current fee amount and the statutory minimum. The amendment would establish the fee at \$401, which is the statutory minimum rounded upwards to the nearest whole dollar for accounting and audit purposes.

The department received one comment opposing adoption of the rules as proposed. The commenter opposed adoption and stated that there should be separate senior lifetime licenses for hunting and fishing. The department disagrees with the comment and responds that the comment is beyond the scope of the rulemaking. The rulemaking is not intended to create new license types. No changes were made as a result of the comment.

The department received two comments supporting adoption of the amendments as proposed.

No groups or associations commented concerning adoption of the amendments as proposed.

The amendments are adopted under the authority of Parks and Wildlife Code, §42.017, which authorizes the commission to establish a fee for a duplicate hunting license or tag; §43.403, which authorizes the commission to establish a fee for the saltwater sportfishing stamp when that fee is in excess of \$5; §46.006, which authorizes the commission to establish a fee for duplicate fishing licenses and tags; and §71.009, which authorizes the commission to set a fee of \$400.75 or greater for a nonresident wholesale fur dealer's license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301577  
Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Effective date: May 9, 2013  
Proposal publication date: December 21, 2012  
For further information, please call: (512) 389-4775



## CHAPTER 59. PARKS

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 24, 2013 adopted amendments to §59.3, concerning Activity and Facility Use Fees, and §59.221, concerning Acceptance of Gratuities, without changes to the proposed text published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9860).

The amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The amendment to §59.3 increases the upper end of the fee range for recreation/meeting hall facilities in the Group One category from \$300 to \$1,000. The department establishes a fee range, consisting of an upper and lower value, for each type of facility or service (or combination thereof) available at a state park, which may vary from site to site. The purpose of the fee-range approach is to provide the flexibility for the department to make incremental adjustments to fee structures from time to time (within the approved ranges) for individual units of the park system in response to changing conditions over a multi-year period. The addition of a new facility at Palo Duro Canyon State Park offers substantially higher grade amenities than were previously available in any state park, with correspondingly higher market value than the current fee range permits, which necessitates an increase in the allowable fees for recreation/meeting halls.

The amendment to §59.221 authorizes the executive director to allow the acceptance of gratuities by department employees at a hospitality unit of a state park. The 80th Texas Legislature in 2007 enacted House Bill 12, which amended Parks and Wildlife Code, §11.0262, to allow an employee of the state parks division to accept a gratuity if the gratuity is offered by a customer of a hospitality unit of the state parks division in appreciation of being served food or beverages or receiving some other customer service from the employee. The amendment authorizes the acceptance of gratuities by certain state park employees with the approval of the executive director.

The department received one comment opposing adoption of the proposed amendments. The commenter stated that tripling the price for facility use would prevent use by much of the general public and would result in reduced revenue over time. The department disagrees with the comment and responds that although the rule as adopted does allow the department to more than triple the fee for using recreation/meeting halls, the rule itself will not automatically increase this fee. The department increases certain public use fees to be competitive with local market values for similar facilities and amenities. The department intends at this time for the increased range to be utilized only at Palo Duro Canyon State Park. The Mack Dick Group Pavilion at Palo Duro Canyon State Park, which was completed in 2012,

is currently underpriced for the amenities offered by the facility. The increased fee range for recreation/meeting halls will enable the department to charge a more appropriate fee for this facility. No changes were made as a result of the comment.

The department received six comments supporting adoption of the proposed amendments.

No groups or associations commented in support of or opposition to adoption of the proposed amendments.

## SUBCHAPTER A. PARK ENTRANCE AND PARK USER FEES

### 31 TAC §59.3

The amendment is adopted under Parks and Wildlife Code, §11.027(e), which authorizes the commission to establish by rule the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301578  
Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Effective date: May 9, 2013  
Proposal publication date: December 21, 2012  
For further information, please call: (512) 389-4775



## SUBCHAPTER I. GRATUITIES

### 31 TAC §59.221

The amendment is adopted under Parks and Wildlife Code, §11.0262, which allows an employee of the state parks division to accept a gratuity if the gratuity is offered by a customer of a hospitality unit of the state parks division in appreciation of being served food or beverages or receiving some other customer service from the employee, and authorizes the commission to adopt rules necessary to implement the provisions of §11.0262.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301579  
Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Effective date: May 9, 2013  
Proposal publication date: December 21, 2012  
For further information, please call: (512) 389-4775



## CHAPTER 69. RESOURCE PROTECTION

### SUBCHAPTER H. ISSUANCE OF MARL, SAND, AND GRAVEL PERMITS

### 31 TAC §69.121

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 24, 2013 adopted an amendment to §69.121, concerning Prices, without changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9864).

The amendment creates a mechanism for the department to impose penalties and interest on permittees who are delinquent in the payment of royalties, the submission of reports or documents or who submit incorrect reports, affidavits, or documents. The amendment stipulates that any royalty not paid when due or any required affidavit, report, or document not submitted when due would be delinquent and subject to penalties if not paid or corrected within 30 days of notification by the department. For delinquent royalty payments, the penalties consist of 10% of the delinquent amount or \$100, whichever is greater, per month. For delinquent or incorrect reports and documents, the penalty is \$100 per month per document, affidavit, or report. The amendment also requires the payment of interest on delinquent royalties at the rate of 12% per year (simple interest), beginning 30 days after the due date of the royalty payment.

In 2011, the department conducted an internal audit of the sand and gravel program's business model and determined that permittees were substantially noncompliant with regulatory deadlines for the submission of royalty payments and reports. This finding was also identified in a 2009 audit. When royalty payments are not timely remitted, the department is denied the full use and benefit of funds that are due. When required affidavits, reports and other documents are incorrect or not timely filed, department staff must expend additional effort to rectify the deficiency. The department therefore believes it is appropriate to promulgate rules to create a monetary penalty that accrues in value the longer the deficiency exists. The department based the structure of the rule on the provisions used by the General Land Office to calculate penalty and interest payments with respect to oil and gas royalties paid to the state under the provisions of 31 TAC §9.51, concerning Royalty and Reporting Obligations to the State, and selected the \$100 value as an amount that would be likely to encourage prompt compliance with the provisions of the subchapter.

The amendment will function by creating an incentive for the prompt payment of royalties and the timely filing of documents and notices required by rule.

The department received one comment supporting adoption of the proposed amendment.

The department received no comments opposing adoption of the proposed amendment.

No groups or associations commented in support of or opposition to adoption of the proposed amendment.

The amendment is adopted under authority of Parks and Wildlife Code, Chapter 86, which authorizes the commission to adopt rules to govern the pricing of and terms for payment for substrate materials and any other matter necessary for the administration of the chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301580

Ann Bright  
General Counsel

Texas Parks and Wildlife Department

Effective date: May 9, 2013

Proposal publication date: December 21, 2012

For further information, please call: (512) 389-4775

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 13. CONTROLLED SUBSTANCES

##### SUBCHAPTER A. GENERAL PROVISIONS

#### 37 TAC §13.1

The Texas Department of Public Safety (the department) adopts amendments to §13.1, concerning Definitions. The amendments are adopted without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1661) and will not be republished.

The amendments are necessary to reorganize and consolidate the rules governing definitions and to generally improve the clarity of the related rules.

No comments were received regarding the adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §481.003, which authorizes the department to adopt rules to enforce Chapter 481 of the Texas Health and Safety Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301593

D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

Effective date: May 9, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 424-5848

#### 37 TAC §§13.2 - 13.11

The Texas Department of Public Safety (the department) adopts the repeal of §§13.2 - 13.11, concerning General Provisions. The repeal is adopted without changes to the proposal as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1662) and will not be republished.

The repeal is necessary to reorganize and consolidate the rules governing definitions and to generally improve the clarity of the related rules.



No comments were received regarding the adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §481.003, which authorizes the department to adopt rules to enforce Chapter 481 of the Texas Health and Safety Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301594

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: May 9, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 424-5848



## SUBCHAPTER B. REGISTRATION

### 37 TAC §§13.21 - 13.33

The Texas Department of Public Safety (the department) adopts the repeal of §§13.21 - 13.33, concerning Registration. The repeal is adopted without changes to the proposal as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1663) and will not be republished.

The repeal of this subchapter is necessary to reorganize and consolidate the rules governing registration requirements and procedures and to generally improve the clarity of the related rules.

No comments were received regarding the adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §481.003, which authorizes the department to adopt rules to enforce Chapter 481 of the Texas Health and Safety Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301595

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: May 9, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 424-5848



### 37 TAC §§13.21 - 13.27

The Texas Department of Public Safety (the department) adopts new §§13.21 - 13.27, concerning Registration. Section 13.26 and §13.27 are adopted with changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1664) and will be republished. Sections 13.21 - 13.25 are adopted without changes and will not be republished.

The adopted new Subchapter B is necessary to reorganize and consolidate the rules governing registration requirements and procedures and to generally improve the clarity of the related rules.

The department accepted comment on the proposed rules through April 8, 2013. Written comments were submitted by Katherine Thomas, Executive Director of the Texas Board of Nursing, and by Lynda Woolbert, Regulatory Consultant for the Coalition for Nurses in Advanced Practice. Changes were made to proposed new §13.27 based on the comments received by the department. Substantive comments received, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding §13.27(e), both Ms. Thomas and Ms. Woolbert commented on certain inconsistencies between the language in this subsection and the statutory provisions of Texas Occupations Code, §157.054, relating to the delegation of authority to prescribe controlled substances.

RESPONSE: The department agrees with these comments and has revised the proposal accordingly, deleting text in §13.27(e) to remove inconsistencies with statute.

COMMENT: Regarding §13.27 generally, Ms. Woolbert commented on the proposal's use of the term "supervising physician" and proposed the substitution of the term "delegating physician" throughout the section to be consistent with Texas Medical Board rules.

RESPONSE: The department agrees with this recommendation and has revised the adoption accordingly.

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §481.003, which authorizes the department to adopt rules to enforce Chapter 481 of the Texas Health and Safety Code.

#### §13.26. Requirement to Update Information.

(a) An applicant for or holder of a registration, a temporary registration, or an annual permit must notify the department before the seventh day after any modification or change in the person's business name, address, physician delegating prescriptive authority, telephone number or other information required on the application, registration, or permit.

(b) The notification must be in writing and include the signature of the registrant or other person who is authorized to sign an original application.

(c) If changing a delegating physician's prescriptive authority, the notification must include the physician's:

- (1) name;
- (2) Texas Medical Board license number;
- (3) DPS registration number;
- (4) signature; and
- (5) date of signature.

(d) A request for modification of a registration may be denied if the modification does not meet the requirements under this section, or if there exists an applicable basis for the denial of an application as described in the Act, §481.063(e).

(e) A registrant may not transfer or assign a registration certificate or an authority conferred by the registration.

§13.27. *Mid-level Practitioner.*

(a) A mid-level practitioner must have a delegating physician with prescriptive authority as required by the Act, §481.002(39)(D). Each physician must certify the authorizing delegation on the mid-level practitioner's application and include the physician's:

- (1) name;
- (2) Texas Medical Board license number;
- (3) DPS registration number;
- (4) signature; and
- (5) date of signature.

(b) A physician who signs a mid-level practitioner's application as the delegating physician assumes responsibility for ensuring the mid-level practitioner practices under the laws of this state related to controlled substances prescribing activities. A physician who fails to properly monitor the mid-level practitioner's activities may be subject to disciplinary action.

(c) A delegating physician must have an unrestricted and active DPS registration and Texas Medical Board license number.

(d) Modification or change of delegating physician.

(1) A change of delegating physician must be submitted in writing as required by this chapter.

(2) A delegating physician must notify the department in writing to terminate delegation with a mid-level practitioner.

(e) Accurate and timely internal institutional records listing the name and license number of the physician must be made available to the department within 24 hours of a request.

(f) The physician is limited to the extent and number of mid-level practitioners the physician delegated as outlined in Texas Occupations Code, Chapter 157.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301596

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: May 9, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 424-5848



## SUBCHAPTER D. TEXAS PRESCRIPTION PROGRAM

### 37 TAC §§13.71 - 13.99

The Texas Department of Public Safety (the department) adopts the repeal of §§13.71 - 13.99, concerning Texas Prescription

Program. The repeal is adopted without changes to the proposal as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1666) and will not be republished.

The repeal of this subchapter is necessary to reorganize and consolidate the rules governing the Texas Prescription Program's reporting requirements and procedures and to generally improve the clarity of the related rules.

No comments were received regarding the adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §481.003, which authorizes the department to adopt rules to enforce Chapter 481 of the Texas Health and Safety Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301597

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: May 9, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 424-5848



### 37 TAC §§13.71 - 13.83

The Texas Department of Public Safety (the department) adopts new §§13.71 - 13.83, concerning Texas Prescription Program. The new sections are adopted without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1667) and will not be republished.

The adopted new Subchapter D is necessary to reorganize and consolidate the rules governing the Texas Prescription Program's reporting requirements and procedures and to generally improve the clarity of the related rules.

The department accepted comment on the proposed rules through April 8, 2013. Written comments were submitted by Mary Staples representing National Association of Chain Drug Stores (NACDS). Substantive comments received, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding §13.75(3), NACDS recommends the department either eliminate the requirement to report the department's "designated placeholder" for schedule II electronic prescriptions or waive the requirement to report this particular data element until twelve months after the department provides pharmacies with the appropriate default value to report for this purpose.

RESPONSE: The department disagrees with these recommendations. The submission of the data element at issue is a requirement of the department's prescription database software application. Waiver or elimination of the requirement would cause the system to reject the electronic submission, resulting in additional administrative burdens on the dispenser and the need for manual processing by the department. In addition, no

specific data element has been established at this time. It is the department's intent to establish a "placeholder" value that will have minimal or no impact on the dispenser.

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §481.003, which authorizes the department to adopt rules to enforce Chapter 481 of the Texas Health and Safety Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301598

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: May 9, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 424-5848



## SUBCHAPTER F. APPLICATION

### 37 TAC §§13.131 - 13.137

The Texas Department of Public Safety (the department) adopts the repeal of §§13.131 - 13.137, concerning Application. The repeal is adopted without changes to the proposal as published

in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1670) and will not be republished.

The repeal of this subchapter is necessary to reorganize and consolidate the rules governing the application requirements and procedures for registration under the Controlled Substances Act, Texas Health and Safety Code Chapter 481 and to generally improve the clarity of the related rules.

No comments were received regarding the adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §481.003, which authorizes the department to adopt rules to enforce Chapter 481 of the Texas Health and Safety Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2013.

TRD-201301599

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: May 9, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 424-5848



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

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## Agency Rule Review Plan

Department of Assistive and Rehabilitative Services

Title 40, Part 2

TRD-201301629

Filed: April 24, 2013

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# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §1.191(g)

Experience Setting	Maximum Training Hours Awarded
<p><b>Experience Setting A: Practice of Architecture</b></p> <p>Training under the Supervision and Control of an IDP supervisor licensed as an architect in Texas or another jurisdiction with substantially similar licensing requirements who works in an organization lawfully engaged in the Practice of Architecture.</p>	<p>No limit</p> <p>Every Applicant must earn at least 1,860 Training Hours in Experience Setting A.</p>
<p><b>Academic Internships</b></p> <p>Must meet durational requirements and internship must be completed training in Experience Setting A or Experience Setting O.</p>	
<p><b>Training Setting O: Other Work Settings</b></p> <p>Supervision and Control of an IDP supervisor licensed as an architect in Texas or another jurisdiction with substantially similar licensing requirements who is employed in an organization not engaged in the Practice of Architecture.</p> <p>Supervision and Control of an IDP supervisor who is not licensed in the United States or Canada but who is engaged in the Practice of Architecture outside of the United States or Canada.</p> <p>Supervision and Control by a landscape architect or licensed professional engineer (practicing as a structural, civil, mechanical, fire protection, or electrical engineer in the field of building construction).</p>	<p>1,860 Training Hours</p>
<p><b>Training Setting S: Supplemental Experience</b></p> <p><b>Supplemental Experience for Core Hours</b> Core hours earned through supplemental experience are applied to specific IDP experience areas.</p> <p><b>Design or Construction Related Employment</b> Design or construction related activities under the direct supervision of a person experienced in the activity (e.g. analysis of existing buildings; planning; programming; design of interior space; review of technical submissions; engaging in building construction activities).</p> <p><b>Leadership and Service</b> Qualifying experience is pro bono, in support of an organized activity or in support of a specific organization. There must be an individual who can certify to NCARB that you have performed services in support of the organization.</p>	<p>930 Training Hours (Maximum)</p> <p>80 Training Hours (Minimum) 320 Training Hours (Maximum)</p>

<p><b>Additional Opportunities for Core Hours</b>  A maximum of 40 core hours in each of the IDP experience areas may be earned by completing any combination of these experience opportunities:</p> <ol style="list-style-type: none"> <li>1. NCARB's Emerging Professional's Companion (EPC): Activities</li> <li>2. NCARB's Professional Conduct Monograph</li> <li>3. Construction Specifications Institute (CSI) Certificate Program: Certified Construction Specifier (CCS) and Certified Construction Contract Administrator (CCCA)</li> <li>4. Community-Based Design Center/Collaborative</li> <li>5. Design Competitions</li> <li>6. Site Visit with Mentor</li> </ol>	<p>600 Training Hours (Maximum)</p>
<p><b>Supplemental Experience for Elective Hours</b>  Elective hours earned through supplemental experience are not applied to any specific IDP experience area.</p> <p><b>Teaching or Research</b>  Teaching or research in a NAAB- or CACB-accredited program under the direct supervision of a person experienced in the activity.</p> <p><b>Additional Opportunities for Elective Hours</b></p> <ol style="list-style-type: none"> <li>1. The Emerging Professional's Companion (EPC): Exercises</li> <li>2. Green Building Certification Institute (GBCI) Leadership in Energy and Environmental Design Accredited Professional (LEED AP) Certification</li> <li>3. Advanced Degrees</li> <li>4. American Institute of Architects (AIA) Continuing Education</li> <li>5. Construction Specifications Institute (CSI) Certificate Program: Construction Documents Technologist (CDT)</li> </ol>	<p>1,860 Elective Hours</p>

# IN

## ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

### Department of Assistive and Rehabilitative Services

#### Notice of Public Hearings and Opportunity for Public Comment

The Texas Department of Assistive and Rehabilitative Services (DARS) is providing an opportunity for public comment and a notice of public hearings on the proposed revisions to 40 TAC Chapter 108, Division for Early Childhood Intervention Services. The proposed revisions are based on feedback from the US Department of Education, feedback from regional contractor meetings, programmatic clarification of existing requirements, and new programmatic requirements.

The public hearings listed below will be held from 4:00 p.m. until 7:00 p.m. to collect public testimony.

#### June 4, 2013 - Amarillo, Texas

Texas Panhandle Centers

2505 South Lakeview

Amarillo, Texas 79109

#### June 6, 2013 - Dallas, Texas

American Foundation for the Blind

11030 Ables Lane

Dallas, Texas 75229

#### June 11, 2013 - Longview, Texas

East Texas Workforce Center

2430 S. High Street, Suite A1

Longview, Texas 75602

#### June 13, 2013 - Houston, Texas

Houston Department of Health and Human Services--WIC Program

8000 N. Stadium Drive

Houston, Texas 77054

Copies of the proposed rules may be obtained from the DARS Web site at <http://www.dars.state.tx.us/> or by contacting the DARS Division for Early Childhood Intervention Services at (512) 424-6754. The proposed rules will be published in the *Texas Register* on or near May 24, 2013.

Written comments on the proposed rule revisions may be submitted electronically to: [DARSrules@dars.state.tx.us](mailto:DARSrules@dars.state.tx.us) or sent by postal mail to:

Texas Department of Assistive and Rehabilitative Services

Center for Policy and External Relations, Mail Code 1411

4800 North Lamar Boulevard

Austin, Texas 78751-2399

**All comments must be received by 5:00 p.m. on June 25, 2013.**

Persons who have communication or other accommodation needs who are planning to attend a public hearing should contact the DARS Inquiries Line at 1-800-628-5115. Requests for accommodations should be made five business days before the date of the hearing.

TRD-201301584

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Filed: April 19, 2013

### Office of the Attorney General

#### Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of and environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title: *United States of America and State of Texas v. City of Port Arthur, Texas, et al.*; No. 1:13-cv-00235; In the U.S. District Court for the Eastern District of Texas, Beaumont Division.

Background: This case involves a tract of approximately 17 acres located 4.5 miles east-northeast of the City of Port Arthur, Jefferson County, Texas, on Old Yacht Club Road on Pleasure Islet, a peninsula located approximately 0.5 miles southwest of the mouth of the Neches River. The Site is bounded on the north by the Palmer Barge Line Superfund Site, to the west by Old Yacht Club Road, to the south by undeveloped property, and to the east by Sabine Lake.

The Site is on the old Port Arthur landfill, the "Pleasure Islet Sanitary Landfill," which was used for disposal of municipal solid waste from about 1969 to 1974. Chester L. Slay Sr. and Chester L. Slay Jr., d/b/a State Welding and Marine, leased the Site from then until about 1984. Their activities included marine salvage and repairs; offloading of chemicals, including petroleum products from barges; bulk storage of offloaded used oil; cleaning of barges that contained various chemical products; operation of unlined earthen wastewater impoundments; and operation of aboveground storage tanks ("ASTs") for storage of waste oil, used oil, chemicals and wastewater.

Various substances were released at the Site, including benzo(a)pyrene, benzo(a)anthracene, benzo(a)fluoranthene, benzo(k)fluoranthene, PCBs, aluminum, antimony, arsenic, barium, beryllium, cadmium, chromium, copper, iron, lead, mercury, nickel, silver, thallium and zinc.

In 1987, the Site became one of 10 sites listed on the first Texas Superfund registry. 12 *Tex. Reg.* 205 (1987). The U.S. Environmental Protection Agency (EPA) listed the Site on the National Priorities List



(NPL) of Superfund Sites in 1998. *63 Fed. Reg. 40182-40188 (July 28, 1998)*. The site was deleted from the state Superfund registry in 1999. *24 Tex. Reg. 322 (Jan. 15, 1999)*. Following a cleanup, EPA issued a "No Further Action Necessary" Record of Decision in April 2007, and the Site was subsequently delisted from the NPL.

The United States and the State of Texas filed the referenced lawsuit on April 17, 2013, naming nine parties as defendants and seeking reimbursement of the costs of their response actions at the Site.

**Nature of the Settlement:** The lawsuit will be settled by a consent decree in the district court.

**Proposed Settlement:** The proposed consent decree provides for the recovery of the State's and the United States' response costs.

The Office of the Attorney General will accept written comments relating to the proposed judgment for thirty (30) days from the date of publication of this notice. The proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. Copies may be obtained in person or by mail for the cost of copying. Requests for copies of the judgment, and written comments on the same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Attorney General (MC-066), P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0052.

TRD-201301618

Katherine Cary  
General Counsel  
Office of the Attorney General  
Filed: April 22, 2013



## Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

**Case Title and Court:** *Harris County, Texas and the State of Texas, acting on behalf of the Texas Commission on Environmental Quality v. ExxonMobil Corporation*, Cause No. 2011-45836, in the 129th Judicial District Court, Harris County, Texas.

**Nature of Defendant's Operations:** This suit involves operations at two locations owned and operated by the Defendant. The Baytown Refinery in Baytown, Texas produces petroleum products such as gasoline, diesel fuel, jet fuel, and feedstock for chemical products. The Olefins Plant, also in Baytown, Texas processes hydrocarbons to produce primarily ethylene, propane, and propylene. The suit alleges that on January 14 and July 19, 2011, Defendant's operations at the Baytown Refinery resulted in emissions of odors resulting in several complaints by nearby citizens. The suit further alleges that at the Olefins Plant, Defendant emitted air contaminants in excess of its permits and state and federal limits from April 12 through June 2, 2011. In addition, the suit alleges that Defendant failed to timely report the excessive emissions.

**Proposed Agreed Judgment:** The Agreed Final Judgment orders Defendant to pay civil penalties, and costs of prosecution to the State. Defendant agrees to pay civil penalties of \$277,500: \$138,750, to be divided equally between Harris County and the State of Texas and \$138,750 to fund a supplemental environmental project. The Defendant will pay attorney's fees to the State of Texas in the amount of \$65,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201301619

Katherine Cary  
General Counsel  
Office of the Attorney General  
Filed: April 22, 2013



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/22/13 - 04/28/13 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/22/13 - 04/28/13 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201301616

Leslie Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: April 22, 2013



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is June 3, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with

the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on June 3, 2013. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Banister, Quentin Wade; DOCKET NUMBER: 2013-0590-WOC-E; IDENTIFIER: RN106583388; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: Banister, Quentin Wade; DOCKET NUMBER: 2013-0605-WOC-E; IDENTIFIER: RN106583388; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: City of Athens; DOCKET NUMBER: 2013-0612-WQ-E; IDENTIFIER: RN103015319; LOCATION: Athens, Henderson County; TYPE OF FACILITY: municipal services; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: City of Athens; DOCKET NUMBER: 2013-0613-WQ-E; IDENTIFIER: RN101702041; LOCATION: Athens, Henderson County; TYPE OF FACILITY: municipal services; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Coastway, Incorporated dba Kwik Stop 2; DOCKET NUMBER: 2013-0546-PST-E; IDENTIFIER: RN102379872; LOCATION: Orange, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: ES. TEHUETLAN LLC dba Fast Stop; DOCKET NUMBER: 2012-2686-PST-E; IDENTIFIER: RN102394947; LOCATION: Weslaco, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Rebecca

Johnson, (361) 825-3423; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: GRAMSN FUELS, INCORPORATED dba Union Bower Mart; DOCKET NUMBER: 2012-2378-PST-E; IDENTIFIER: RN101569887; LOCATION: Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and making them immediately available for inspection upon request by agency personnel; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; PENALTY: \$6,744; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: GREEN EXPRESS STORES, INCORPORATED dba US Express 1; DOCKET NUMBER: 2012-2377-PST-E; IDENTIFIER: RN101748325; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.72 and §334.50(d)(9)(A)(v), by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: \$6,663; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Joey D. Pace; DOCKET NUMBER: 2013-0651-WOC-E; IDENTIFIER: RN103382115; LOCATION: Shamrock, Wheeler County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(10) COMPANY: Lake Dallas Independent School District; DOCKET NUMBER: 2012-2635-PST-E; IDENTIFIER: RN101539872; LOCATION: Lake Dallas, Denton County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the suction piping associated with the UST system; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: MLK Retail Corporation dba MLK Food Mart; DOCKET NUMBER: 2012-2697-PST-E; IDENTIFIER: RN101846152; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A) and (2) and TWC,

§26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$9,416; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Mohammed Haider dba K N S Stops; DOCKET NUMBER: 2012-2178-PST-E; IDENTIFIER: RN103026951; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$3,751; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Murphey, Lyle B.; DOCKET NUMBER: 2013-0659-WOC-E; IDENTIFIER: RN103750162; LOCATION: Austin, Travis County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-1808, (512) 339-2929.

(14) COMPANY: MURPHY OIL USA, INCORPORATED dba Murphy USA 6653; DOCKET NUMBER: 2012-2552-PST-E; IDENTIFIER: RN102228988; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$9,530; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Northwest Harris County Municipal Utility District Number 36; DOCKET NUMBER: 2012-2161-MWD-E; IDENTIFIER: RN101702033; LOCATION: Spring, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0013573001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$1,063; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: OCHO NLSS MG CORPORATION dba Sams Food Mart 4; DOCKET NUMBER: 2012-2474-PST-E; IDENTIFIER: RN101378792; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$4,111; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Patisu Properties, Incorporated dba The Shade Tree; DOCKET NUMBER: 2013-0023-PST-E; IDENTIFIER: RN101844611; LOCATION: Comanche, Comanche County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,942; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(18) COMPANY: Pennington, Bradley E.; DOCKET NUMBER: 2013-0658-WOC-E; IDENTIFIER: RN105298087; LOCATION: Broaddus, San Augustine County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: Rohe, Michael; DOCKET NUMBER: 2013-0614-WOC-E; IDENTIFIER: RN106604150; LOCATION: Coppell, Dallas County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: SAC-N-PAC STORES, INCORPORATED dba Sac N Pac 504; DOCKET NUMBER: 2013-0157-PST-E; IDENTIFIER: RN102965381; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Southern Star Concrete, Incorporated; DOCKET NUMBER: 2012-2530-PST-E; IDENTIFIER: RN101970556; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: diesel fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank system; PENALTY: \$2,954; Supplemental Environmental Project offset amount of \$1,182 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Stripes LLC dba Stripes 102; DOCKET NUMBER: 2012-2668-PST-E; IDENTIFIER: RN101856607; LOCATION: Coahoma, Howard County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$6,750; Supplemental Environmental Project offset amount of \$2,700 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(23) COMPANY: TA Operating LLC dba Petro Stopping Center 350; DOCKET NUMBER: 2012-2665-PST-E; IDENTIFIER: RN102418142; LOCATION: Vinton, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to

provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$10,350; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(24) COMPANY: Tran Hoa dba Corner Stop Food Mart; DOCKET NUMBER: 2013-0545-PST-E; IDENTIFIER: RN101446664; LOCATION: Brazoria, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201301623

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 23, 2013



#### Enforcement Orders

An agreed order was entered regarding UNION FOOD STORE INC., Docket No. 2011-1314-PST-E on April 5, 2013 assessing \$2,600 in administrative penalties with \$520 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Millennium B & O Corporation dba Texaco Loop 12, Docket No. 2011-1791-PST-E on April 5, 2013 assessing \$3,979 in administrative penalties with \$795 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STAR TOUCH TECHNOLOGIES INC. dba Dew Truck Stop, Docket No. 2012-0618-PST-E on April 5, 2013 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EAGLE'S DROP LLC, Docket No. 2012-0970-MLM-E on April 5, 2013 assessing \$2,016 in administrative penalties with \$403 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EXTERRAN ENERGY SOLUTIONS, L.P., Docket No. 2012-1034-AIR-E on April 5, 2013 assessing \$5,995 in administrative penalties with \$1,199 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Garrett Flying Service, Inc. dba Austin Bayou Golf Course and RV Park, Docket No. 2012-1048-WR-E on April 5, 2013 assessing \$7,411 in administrative penalties with \$1,482 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Betty J. Dean dba Dean's Hardware, Docket No. 2012-1149-PST-E on April 5, 2013 assessing \$3,880 in administrative penalties with \$776 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bishnu Shiwakoti dba S & B Store 3, Docket No. 2012-1211-PST-E on April 5, 2013 assessing \$2,475 in administrative penalties with \$495 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WRIGHT JOSHUA INVESTMENTS, LLC dba Wright Stop 371, Docket No. 2012-1573-PST-E on April 5, 2013 assessing \$3,563 in administrative penalties with \$712 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ha Van Nguyen dba Austin Aqua System, Docket No. 2012-1620-PWS-E on April 5, 2013 assessing \$1,610 in administrative penalties with \$322 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Austin Equipment Company, LC, Docket No. 2012-1671-AIR-E on April 5, 2013 assessing \$1,113 in administrative penalties with \$222 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Abdul Saleem and Patty Saleem dba Panther Pit Stop, Docket No. 2012-1674-PST-E on April 5, 2013 assessing \$2,905 in administrative penalties with \$581 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RDW Rudy's Frisco Limited Partnership dba Rudy's Country Store and Bar B Q, Docket No. 2012-

1677-PST-E on April 5, 2013 assessing \$6,886 in administrative penalties with \$1,377 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COOPER NATURAL RESOURCES INC., Docket No. 2012-1719-IHW-E on April 5, 2013 assessing \$2,140 in administrative penalties with \$428 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHEPHERD BUSINESS, INC. dba Stop N Drive, Docket No. 2012-1726-PST-E on April 5, 2013 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SPENCER #1 ENTERPRISES, INC. dba Amigo Food Mart, Docket No. 2012-1731-PST-E on April 5, 2013 assessing \$2,974 in administrative penalties with \$594 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North East Independent School District, Docket No. 2012-1761-EAQ-E on April 5, 2013 assessing \$6,713 in administrative penalties with \$1,342 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Concrete Enterprise, L.L.C., Docket No. 2012-1762-IWD-E on April 5, 2013 assessing \$1,562 in administrative penalties with \$312 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kuraray America, Inc., Docket No. 2012-1780-AIR-E on April 5, 2013 assessing \$4,565 in administrative penalties with \$913 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Abed Ammouri dba Phillips Mart, Docket No. 2012-1790-PST-E on April 5, 2013 assessing \$4,873 in administrative penalties with \$974 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cargill Meat Solutions Corporation, Docket No. 2012-1796-AIR-E on April 5, 2013 assessing \$3,875 in administrative penalties with \$775 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M. USA Enterprises LLC dba Millenium Food Store, Docket No. 2012-1850-PST-E on April 5, 2013 assessing \$4,687 in administrative penalties with \$937 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALYSSA ENTERPRISE, INC. dba Spencer Food Mart, Docket No. 2012-1853-PST-E on April 5, 2013 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ASMARA ENTERPRISES, INC. dba Rite Track 11, Docket No. 2012-1865-PST-E on April 5, 2013 assessing \$6,880 in administrative penalties with \$1,376 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CLYDE VIEW ENTERPRISES LLC dba Anita Food Mart 2, Docket No. 2012-1875-PST-E on April 5, 2013 assessing \$3,502 in administrative penalties with \$700 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rankin Road West Municipal Utility District, Docket No. 2012-1878-MWD-E on April 5, 2013 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Prapti, LLC dba Deer Park Grocery, Docket No. 2012-1888-PST-E on April 5, 2013 assessing \$2,888 in administrative penalties with \$577 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mack Gaudet dba Twin Oaks Country Store, Docket No. 2012-1896-PST-E on April 5, 2013 assessing \$5,309 in administrative penalties with \$1,061 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hag Yong Yu dba Y-All Season Food Store, Docket No. 2012-1912-PST-E on April 5, 2013 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Platinum Packing, Inc., Docket No. 2012-1923-AIR-E on April 5, 2013 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MLK FIRST STOP, INC. dba First Stop Food Store, Docket No. 2012-1938-PST-E on April 5, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Manisha S. Gorkhali dba Hopes New Way, Docket No. 2012-1947-PST-E on April 5, 2013 assessing \$3,900 in administrative penalties with \$780 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S. M. K. INTERNATIONAL, INC. dba Decent Food Stop, Docket No. 2012-1951-PST-E on April 5, 2013 assessing \$4,063 in administrative penalties with \$812 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Deer Park, Docket No. 2012-1952-PST-E on April 5, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Riverstop Inc dba Smart Mart 1, Docket No. 2012-1953-PST-E on April 5, 2013 assessing \$3,510 in administrative penalties with \$702 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MEX-PAK-U.S.A., Inc. Shop & Save Food Store, Docket No. 2012-1954-PST-E on April 5, 2013 assessing \$7,125 in administrative penalties with \$1,425 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G & C Contracting Company, Inc., Docket No. 2012-1963-AIR-E on April 5, 2013 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Woodgate Mobile Home Village, Inc., Docket No. 2012-1979-MWD-E on April 5, 2013 assessing \$3,938 in administrative penalties with \$787 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stella Link Service Station, Inc. dba Stella Link Mobil, Docket No. 2012-1984-PST-E on April 5, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (956) 750-1927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Jarvis dba Forestaire Estates, Docket No. 2012-1996-MWD-E on April 5, 2013 assessing \$4,875 in administrative penalties with \$975 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mat-J, L.L.C. dba Lone Star No. 7, Docket No. 2012-1998-PST-E on April 5, 2013 assessing \$2,571 in administrative penalties with \$514 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DALLAS CTG CORPORATION dba North Oak Grocery, Docket No. 2012-2000-PST-E on April 5, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Duy Nguyen dba Boyddang Automotive, Docket No. 2012-2024-MSW-E on April 5, 2013 assessing \$262 in administrative penalties with \$52 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Martinek Trucking Corporation, Docket No. 2012-2026-IHW-E on April 5, 2013 assessing \$938 in administrative penalties with \$187 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Billy Del Goodman dba Goodman's, Docket No. 2012-2034-PST-E on April 5, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mazen, LLC dba Truck N Travel, Docket No. 2012-2054-PST-E on April 5, 2013 assessing \$5,759 in administrative penalties with \$1,151 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pettus Municipal Utility District, Docket No. 2012-2069-MWD-E on April 5, 2013 assessing \$1,220 in administrative penalties with \$244 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kenedy, Docket No. 2012-2072-IWD-E on April 5, 2013 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAZE, INC. dba New Way Food Store, Docket No. 2012-2083-PST-E on April 5, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Iram Rashid, Docket No. 2012-2090-PST-E on April 5, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHAIKH TRADING, LLC dba Kool Korner Mart, Docket No. 2012-2117-PST-E on April 5, 2013 assessing \$1,317 in administrative penalties with \$263 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Grover Boyd dba Road Runner Superette 2, Docket No. 2012-2118-PST-E on April 5, 2013 assessing \$3,886 in administrative penalties with \$777 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Abraham Sayeg dba UNCO Food Store 372, Docket No. 2012-2120-PST-E on April 5, 2013 assessing \$2,438 in administrative penalties with \$487 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Levelland, Docket No. 2012-2121-MSW-E on April 5, 2013 assessing \$1,125 in administrative penalties with \$225 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MUGHAL, INC. dba Wilson Food Mart 2, Docket No. 2012-2145-PST-E on April 5, 2013 assessing \$2813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Noble Business Inc. dba Z Mini Mart, Docket No. 2012-2149-PST-E on April 5, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RAJESWARY LLP dba C Z Express, Docket No. 2012-2155-PST-E on April 5, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NRV Enterprise, Inc. dba Conoco Phillips 66 Food Mart, Docket No. 2012-2156-PST-E on April 5, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Newman Copeland, Docket No. 2012-2180-WR-E on April 5, 2013 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shujat Holding Company dba Lone Star Super Market, Docket No. 2012-2195-PST-E on April 5, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tarkington - Safari Investments, Inc. dba Tarkington Country Mart, Docket No. 2012-2207-PST-E on April 5, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A.P & R LLC and Akhila Inc dba A Mikeys Quik Stop, Docket No. 2012-2227-PST-E on April 5, 2013 assessing \$2,942 in administrative penalties with \$588 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORRIS-BRANTLEY, INC. dba Skinner's Grocery & Market, Docket No. 2012-2237-PST-E on April 5, 2013 assessing \$3,505 in administrative penalties with \$701 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Star Concrete, Inc., Docket No. 2012-2243-AIR-E on April 5, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Weatherford Independent School District, Docket No. 2012-2285-PST-E on April 5, 2013 assessing \$6,564 in administrative penalties with \$1,312 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (965) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Snappy's Exxpress Mart, Inc., Docket No. 2012-2336-PST-E on April 5, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Big Tex Transportation, Inc. dba Big Tex Fuel Stop, Docket No. 2012-2412-PST-E on April 5, 2013 assessing \$3,504 in administrative penalties with \$700 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding New Medical Horizon, II, Ltd., Docket No. 2012-2600-PST-E on April 5, 2013 assessing \$3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512)

239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding DMAC CONSTRUCTION & DEVELOPMENT INC, Docket No. 2013-0046-WQ-E on April 5, 2013 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding John D Nelson, Docket No. 2013-0064-WOC-E on April 5, 2013 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Trehan & Raina Enterprises, LLC dba Cypress Point Shell, Docket No. 2013-0069-PST-E on April 5, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding REDDY BUSINESS SOLUTIONS, INC. dba Oaks Corner, Docket No. 2013-0070-PST-E on April 5, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Brian Fabre, Docket No. 2013-0093-AIR-E on April 5, 2013 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding SHAHIL CORPORATION dba Springtime Food Store, Docket No. 2013-0115-PST-E on April 5, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2579, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding SBN ENT INC. dba Speedys, Docket No. 2013-0141-PST-E on April 5, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Jai L N Inc. dba Nomads, Docket No. 2013-0142-PST-E on April 5, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-



2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding CHUBBIES INVESTMENTS INC dba Super One Store, Docket No. 2013-0143-PST-E on April 5, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding William K Mesneak, Docket No. 2013-0179-WOC-E on April 5, 2013 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201301632

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 24, 2013



## Notice of Water Quality Applications

The following notices were issued on April 12, 2013 through April 19, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

### INFORMATION SECTION

CACHAREL TEXAS HAWAII LTD has applied for a renewal of Texas Commission on Environmental Quality (TCEQ) Permit No. WQ0014046001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 7,900 gallons per day via non-public access subsurface drainfields with a minimum area of 80,000 square feet. The wastewater treatment facility and disposal site are located approximately 800 feet east-northeast of the intersection of Nine Mile Bridge Road and Nine Mile Azle Road at the north and east side of the Country Oaks Mobile Home Park in Tarrant County, Texas 76135.

K-3 RESOURCES LP has applied to the TCEQ for renewal of Texas Pollution Discharge Elimination System (TPDES) Sludge Permit No. WQ0004538000 (EPA I.D. No. TXL005011) to authorize the processing of municipal wastewater treatment plant sludge products, with a total capacity of 360,000 gallons. This permit will not authorize a discharge of pollutants into waters in the State. The sludge processing facility is located on the Karlis Ercums III Trust Property, which is located at 9458 Farm-to-Market Road 362, in the northwest corner of the intersection of State Highway 362 and State Highway 529, in Waller County, Texas 77423.

CITY OF CONROE has applied for a renewal of TPDES Permit No. WQ0010008002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The facility is located at 2400 Sergeant Ed Holcomb Boulevard South, immediately north of the confluence of Lake Creek with

the West Fork of the San Jacinto River, at the end of Sergeant Ed Holcomb Boulevard, approximately 2.5 miles West of Interstate Highway 45 and approximately 2.5 miles south of Farm-to-Market Road 2854 in Montgomery County, Texas 77304.

CITY OF MOULTON has applied for a renewal of TPDES Permit No. WQ0010227001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 242,000 gallons per day. The facility is located at 106 East Rose Boulevard, approximately three blocks south of the intersection of East Rose Boulevard and Moore Avenue in the City of Moulton in Lavaca County, Texas 77975.

CITY OF CROSS PLAINS has applied for a major amendment to TCEQ Permit No. WQ0010434001, to authorize the land application of wastewater treatment plant sludge for beneficial use on approximately 65.5 acres. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 87,500 gallons per day via surface irrigation of 79.6 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 2,500 feet west of State Highway 279 and 4,000 feet south of State Highway 36 in Callahan County, Texas 76443.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495151, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located at 1818 Mosher Lane, approximately 1,400 feet southwest of the intersection of Stuebner-Airline Road and State Highway 249 in Harris County, Texas 77088.

AQUA TEXAS INC has applied for a renewal of TPDES Permit No. WQ0012122001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located at 2450 Appelt Drive, on the south side of Carpenters Bayou, approximately 3/4 mile southeast of Carpenters Bayou's crossing of Interstate Highway 10 in Harris County, Texas 77015.

NADIJA BALABAN SULYUKMANOV AND ALBERT FARHATOVICH SULYUKMANOV have applied to the TCEQ for a renewal of TPDES Permit No. WQ0013749001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 9135 Airline Drive, approximately 400 feet south of Halls Bayou and approximately 400 feet west of Airline Drive in Harris County, Texas 77037.

DHJB DEVELOPMENT LLC has applied for a major amendment to Permit No. WQ0014975001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 75,000 gallons per day to a daily average flow not to exceed 350,000 gallons per day. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day via a public access subsurface drip irrigation system with a minimum area of 750,000 square feet. The wastewater treatment facility will be located approximately 0.7 mile north of Farm-to-Market Road 1863 and 0.5 mile east of US Highway 281 in Comal County, Texas 78163. The proposed outfall will be located in the Edwards Aquifer Contributing Zone above the Edwards Aquifer Recharge Zone.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201301631



## Notice of Water Rights Application

Notice issued April 15, 2013.

APPLICATION NO. 5838A; Lower Colorado River Authority (Applicant or LCRA), P.O. Box 220, R325, Austin, Texas 78767, has applied for amendments to its Water Management Plan pursuant to Texas Water Code §11.122 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §295.1, et seq. Mailed and published notice of the application is being given to the water right holders of record in the Colorado River Basin pursuant to 30 TAC §295.158. The Water Management Plan (WMP) for the Lower Colorado Basin defines LCRA's water management programs and policies in accordance with the Final Order of Adjudication of the water rights for the Lower Colorado River Authority, the Enabling Act of the Lower Colorado River Authority, General Law of the State of Texas, particularly the Texas Water Code, LCRA's Certificates of Adjudication Nos. 14-5478 and 14-5482, as amended, the Commission's Orders concerning the WMP, and the water policies of the Lower Colorado River Authority's Board of Directors. The application and fees were received on March 12, 2012. Additional information was received on April 11, 2012; April 12, 2012; May 1, 2012; May 31, 2012; September 10, 2012; and November 12, 2012. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 19, 2012. The TCEQ Executive Director has completed the technical review of the application. The ED's technical analysis of the Water Management Plan evaluated the impacts of this amendment on existing water rights and the environment. The Executive Director prepared a draft Order Approving Amendments to LCRA's Water Management Plan. The draft Order does not allow LCRA additional discretion to modify its curtailment procedures during dry years and requires LCRA to submit an amendment to its Water Management Plan by January 30, 2020. LCRA's amended Water Management Plan, if granted, is subject to all findings, conclusions, and conditions contained in the Commission's Order. The application and Executive Director's draft Order Approving Amendments to LCRA's Water Management Plan are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. A list of zip codes in which persons reside who may be affected by this application has been provided by the applicant to the TCEQ. To request a copy, contact Tracie Donnelly at [Tracie.Donnelly@tceq.texas.gov](mailto:Tracie.Donnelly@tceq.texas.gov) or (512) 239-0083. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.texas.gov/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201301638

Bridget C. Bohac

Chief Clerk

Texas Commission of Environmental Quality

Filed: April 24, 2013



## Texas Ethics Commission

### List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

### **Deadline: Semiannual Report due January 15, 2013 for Candidates and Officeholders**

Christopher D. Christal, P.O. Box 12104, San Antonio, Texas 78212

Joe A. Foster, Jr., P.O. Box 611, Alpine, Texas 79831

Joseph F. Hoelscher II, 7123 Thrush View #26, San Antonio, Texas 78209

Sherri L. Little, 10803 Poinsettia, Gilmer, Texas 75644

Jesus A. "Alex" Mendoza, PMB 128, 2560 King Arthur Blvd., Ste. 124, Lewisville, Texas 75056

Alfred Molison, Jr., P.O. Box 31546, Houston, Texas 77231

G.C. Molison, P.O. Box 31546, Houston, Texas 77231

Rod Ponton, 2301 N. Hwy. 118, Alpine, Texas 79830

### **Deadline: Semiannual Report due January 15, 2013 for Committees**

Christopher Plata, Houston Area Stonewall Democrats Political Action Committee, 19514 Remington Cross Dr., Houston, Texas 77073-4395

TRD-201301625

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**General Land Office**

**Notice and Opportunity to Comment on Requests for  
Consistency Agreement/Concurrence Under the Texas Coastal  
Management Program**

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 15 through April 22, 2013. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on April 24, 2013. The public comment period for this project will close at 5:00 p.m. on May 24, 2013.

**FEDERAL AGENCY ACTIONS:**

**Applicant: SpaceX;** Federal Agency: Federal Aviation Administration Draft Environmental Impact Statement (DEIS) - SpaceX Texas Launch Site: SpaceX has proposed to construct and operate a private launch site in order to accommodate its launch manifest and meet tight launch windows. SpaceX intends to apply to the FAA/AST for launch licenses and/or experimental permits to conduct launches of the Falcon Program vehicles and a variety of reusable suborbital launch vehicles from the proposed launch site on privately owned property in Cameron County, Texas. Proposed operations would consist of up to 12 launches per year with a maximum of two Falcon Heavy launches, through the year 2022. To support these launches, SpaceX has proposed the construction of a vertical launch area and a control center area in Cameron County, approximately 17 miles east-northeast of the Brownsville/South Padre Island International Airport and approximately 5 miles south of South Padre Island. The approximate 56.5-acre property is completely undeveloped and consists of 25.43 acres of jurisdictional wetlands and 31.07 acres of sporadically vegetated sand dunes. The area surrounding the proposed vertical launch area is primarily used for recreational purposes. Development of the proposed vertical launch area at this location would only occur within 20 acres of the entire 56.5-acre property. The rest of the property would remain open space. Construction at this location for the proposed vertical launch area would generally involve placing fill material to

elevate land levels enough to avoid frequent flooding. All facilities would be constructed through private funding, on currently undeveloped privately-owned property that would be purchased or leased by SpaceX. In addition, a new underground power line would be installed in the State Highway 4 road right-of-way from the control center area to the vertical launch area. As part of the licensing and permitting process, SpaceX must implement a plan that defines the process for ensuring that any unauthorized persons, vessels, trains, aircraft, or other vehicles are not within the hazard area. SpaceX would coordinate with federal and state agencies on the preparation of a detailed closure plan that describes the procedures for land closure and water closure areas that would limit public access on launch day along State Highway 4, on Boca Chica Beach, and offshore areas. The FAA/AST would likely issue launch specific licenses for the first few years of operation of the exclusive launch site. The requirements for obtaining and possessing a launch license and/or experimental permit are described in 14 CFR Parts 400 - 450. The completion of the environmental review process does not guarantee that the FAA would issue launch licenses and/or experimental permits to SpaceX to launch from the proposed privately owned site in Cameron County, Texas. Further information can be found in the DEIS available at [http://www.faa.gov/about/office\\_org/headquarters\\_offices/ast/environmental/nepa\\_docs/review/documents\\_progress/spacex\\_texas\\_launch\\_site\\_environmental\\_impact\\_statement/](http://www.faa.gov/about/office_org/headquarters_offices/ast/environmental/nepa_docs/review/documents_progress/spacex_texas_launch_site_environmental_impact_statement/). CMP Project No.: 13-1019-F2.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Sheri Land, Director, P.O. Box 12873, Austin, Texas 78711-2873 or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov). Comments should be sent to Ms. Land at the above address or by email.

TRD-201301645  
Larry L. Laine  
Chief Clerk/Deputy Land Commissioner  
General Land Office  
Filed: April 24, 2013

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**Department of State Health Services**

**Licensing Actions for Radioactive Materials**

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Bastrop	The Bastrop Lost Pines Center for Cancer Care, Ltd. dba The Lost Pines Center for Cancer Care	L06543	Bastrop	00	04/02/13
Sugar Land	GE Energy Oilfield Technology, Inc.	L06542	Sugar Land	00	03/28/13
Throughout TX	Spectrum NDT USA, Inc.	L06545	Angleton	00	04/11/13
Throughout TX	Drash Consultants, L.L.C.	L06544	San Antonio	00	04/09/13

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Alvin	Ascend Performance Materials Operations, L.L.C.	L06271	Alvin	04	04/05/13
Columbus	Columbus Community Hospital	L03508	Columbus	21	04/08/13
Cypress	North Cypress Medical Center Operating Company, L.L.C. dba North Cypress Medical Center	L06020	Cypress	26	04/10/13
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	194	03/27/13
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	195	04/02/13
Dallas	Crown Imaging, L.L.C.	L06223	Dallas	05	04/09/13
Denton	Columbia Medical Center of Denton Subsidiary, L.P. dba Denton Regional Medical Center	L02764	Denton	71	03/27/13
El Paso	El Paso Healthcare System, Ltd. dba Las Palmas Medical Center	L02715	El Paso	82	04/05/13
Fort Worth	Tarrant County Cardiology	L04659	Fort Worth	22	04/02/13
Grapevine	Baylor Medical Center at Grapevine	L03320	Grapevine	31	04/09/13
Harlingen	Harlingen Medical Center	L05587	Harlingen	06	04/03/13
Houston	Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center	L01168	Houston	138	04/12/13
Houston	Gulf Coast Cancer Center	L05185	Houston	17	04/03/13
Houston	Leachman Cardiology Associates, P.A.	L05229	Houston	13	04/02/13
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	89	04/08/13
Houston	Cardinal Health	L05536	Houston	39	04/03/13
Houston	NIS Holdings, Inc. dba Nuclear Imaging Services	L05775	Houston	87	04/02/13
Houston	Southampton Medical Imaging, L.L.C.	L06319	Houston	04	04/02/13
Kosse	U. S. Silica Company	L03150	Kosse	13	04/10/13
Lubbock	M. Fawwaz Shoukfeh, M.D., P.A. dba Texas Cardiac Center	L05276	Lubbock	17	04/12/13
Marble Falls	Synergy Advanced Imaging, Ltd.	L06146	Marble Falls	02	04/10/13
McAllen	Texas Oncology, P.A. dba South Texas Cancer Center at McAllen	L04880	McAllen	14	04/04/13

## AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
McKinney	Texas Institute of Cardiology, P.A.	L05953	McKinney	03	04/02/13
McKinney	Baylor Medical Centers at Garland and McKinney dba Baylor Medical Center at McKinney	L06470	McKinney	01	04/01/13
Pasadena	MEMC Pasadena, Inc.	L05129	Pasadena	14	04/08/13
Plano	La Mastra Holdings, P.L.L.C. dba Mind Matters Clinic of Texas	L06489	Plano	01	04/04/13
Rockdale	Rockdale Blackhawk, L.L.C. dba Little River Healthcare	L06092	Rockdale	07	04/05/13
Round Rock	Scott and White Community Hospital Corporation dba Scott and White Healthcare-Round Rock	L06085	Round Rock	10	04/15/13
Sugar Land	Memorial Hermann Health System dba Memorial Hermann Sugar Land Hospital	L03457	Sugar Land	40	04/15/13
Throughout TX	J-W Wireline Company	L06132	Addison	21	03/28/13
Throughout TX	Cardinal Health	L02117	Austin	87	04/09/13
Throughout TX	Holt Engineering, Inc.	L02752	Austin	18	03/28/13
Throughout TX	Wildcat Wireline, L.L.C.	L06199	Benbrook	04	04/03/13
Throughout TX	Terracon Consultants, Inc.	L05268	Dallas	41	04/15/13
Throughout TX	Northeastern Pavers, Inc.	L05665	Granbury	05	03/28/13
Throughout TX	RLN Corporation	L06433	Hitchcock	05	04/08/13
Throughout TX	DAE & Associates, Ltd. dba Geotech Engineering	L03923	Houston	24	04/01/13
Throughout TX	Austin Reed Engineers, L.L.C.	L05578	Houston	08	03/28/13
Throughout TX	QC Laboratories, Inc.	L05956	Houston	10	03/27/13
Throughout TX	Century Asphalt, Ltd.	L06539	Houston	01	03/28/13
Throughout TX	RWLS, L.L.C. dba Renegade Services	L06307	Levelland	14	04/09/13
Throughout TX	American X-Ray & Inspection Services, Inc. dba A X I S, Inc.	L05974	Midland	32	04/01/13
Throughout TX	Rising Star Services, L.P.	L06393	Midland	04	03/28/13
Throughout TX	Shared Medical Services, Inc.	L06142	Nacogdoches	03	04/03/13
Throughout TX	APEX Geoscience, Inc.	L04929	Tyler	43	03/28/13
Tomball	RCOA Imaging Services, Inc.	L06091	Tomball	08	04/10/13
Tyler	Mother Frances Hospital	L01670	Tyler	183	03/27/13
Tyler	Cardiovascular Associates of East Texas, P.A.	L04800	Tyler	31	03/26/13
Tyler	Cardiovascular Associates of East Texas, P.A.	L04800	Tyler	32	04/03/13
Webster	Texas Oncology, P.A. dba Deke Slayton Memorial Cancer Center	L06465	Webster	02	04/08/13
Wichita Falls	United Regional Health Care System, Inc.	L00350	Wichita Falls	113	04/02/13

## RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	T. Smith Inspection and Testing, L.L.C.	L05697	Fort Worth	12	04/02/13
Houston	Atomic Energy Industrial Laboratories of the Southwest	L01067	Houston	30	04/11/13
Arlington	Texas MPM Products, Inc.	L00967	Arlington	40	04/05/13
Webster	Cardiovascular Associates of Clear Lake, P.A.	L05549	Webster	11	04/05/13

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201301639  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: April 24, 2013

## **Texas Department of Housing and Community Affairs**

### **Notice to Public and to All Interested Mortgage Lenders; Mortgage Credit Certificate Program**

The Texas Department of Housing and Community Affairs (the "Department") intends to implement a Mortgage Credit Certificate Program (the "Program") to assist eligible very low, low, and moderate income first-time homebuyers with the purchase of a residence located within the State of Texas.

Under the Program, a first-time homebuyer who satisfies the eligibility requirements described below may receive a federal income tax credit in an amount equal to the product of the certificate credit rate established under the Program and the interest paid or accrued by the homeowner during the taxable year on the remaining principal of the certified indebtedness amount incurred by the homeowner to acquire the principal residence of the homeowner; provided that such credit allowed in any taxable year does not exceed \$2,000. In order to qualify to receive a mortgage credit certificate, the homebuyer must qualify for a conventional, FHA, VA or other home mortgage loan from a lending institution and must meet the other requirements of the Program.

The mortgage credit certificates will be issued to qualified mortgagors on a first-come, first-served basis by the Department, which will review applications from lending institutions and prospective mortgagors to determine compliance with the requirements of the Program and determine that mortgage credit certificates remain available under the Program. No mortgage credit certificates will be issued prior to ninety (90) days from the date of publication of this notice or after the date that all of the credit certificate amount has been allocated to homebuyers, and in no event will mortgage credit certificates be issued later than the date permitted by federal tax law.

In order to satisfy the eligibility requirements for a mortgage credit certificate under the Program:

(a) the prospective residence must be a single-family residence located within the State of Texas that can be reasonably expected to become the principal residence of the mortgagor within a reasonable period of time after the financing is provided;

(b) the prospective homebuyer's current income must not exceed:

(1) for families of three or more persons, 115% (140% in certain targeted areas or in certain cases permitted under applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code")) of the area median income; and

(2) for individuals and families of two persons, 100% (120% in certain targeted areas or in certain cases permitted under applicable provisions of the Code) of the area median income;

(c) the prospective homebuyer must not have owned a home as a principal residence during the past three years (except in the case of certain targeted area residences or in certain cases permitted under applicable provisions of the Code);

(d) the acquisition cost of the residence must not exceed 90% (110%, in the case of certain targeted area residences or in certain cases permitted under applicable provisions of the Code) of the average area purchase price applicable to the residence; and

(e) no part of the proceeds of the qualified indebtedness may be used to acquire or replace an existing mortgage (except in certain cases permitted under applicable provisions of the Code).

To obtain additional information on the Program, including the boundaries of current targeted areas, as well as the current income and purchase price limits (which are subject to revision and adjustment from time to time by the Department pursuant to changes in applicable federal law and Department policy), please contact Cathy Gutierrez at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410, (512) 475-0277.

The Department intends to maintain a list of single family mortgage lenders that will participate in the Program by making loans to qualified holders of these mortgage credit certificates. Any lender interested in appearing on this list or in obtaining additional information regarding the Program should contact Cathy Gutierrez at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410, (512) 475-0277. The Department may schedule a meeting with lenders to discuss in greater detail the requirements of the Program.

This notice is published in satisfaction of the requirements of §25 of the Code and Treasury Regulation §1.25 - 3T(j)(4) issued thereunder regarding the public notices prerequisite to the issuance of mortgage credit certificates and to maintaining a list of participating lenders.

TRD-201301617

Timothy K. Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: April 22, 2013



#### Request for Proposals for Property Management Services

**SUMMARY.** Real Estate Broker services are needed for income and rent restricted multifamily rental properties located throughout Texas for purpose of acquisition, disposition, and preservation of real property as requested by the Texas Department of Housing and Community Affairs (Department or TDHCA).

**POSTING DATE AND DEADLINE FOR SUBMISSION.** The Request for Proposals (RFP) will be posted on TUESDAY, APRIL 16, 2013. The deadline for submission in response to the RFP is 2:00 p.m., Central Daylight Saving Time, TUESDAY, MAY 14, 2013. No submittal received after the deadline will be considered. No incomplete, unsigned, or late qualification summaries will be accepted after the deadline, unless the Department determines, in its sole discretion that it is in the best interest of TDHCA to do so.

Individuals or firms interested in submitting a proposal should visit our website at: <http://www.tdhca.state.tx.us/> under the "What's New" section or visit <http://esbd.cpa.state.tx.us/> for a complete copy of the RFP: #332-RFP13-1003. Throughout the procurement process, all questions relating to this RFP must be submitted to the Department in writing to Julie Dumbeck ([julie.dumbeck@tdhca.state.tx.us](mailto:julie.dumbeck@tdhca.state.tx.us)).

**PLACE AND METHOD OF QUALIFICATION DELIVERY.** Proposals shall be delivered to:

Texas Department of Housing and Community Affairs

Attention: Julie Dumbeck

#### Mailing Address:

P.O. Box 13941

Austin, TX 78711-3941

#### Physical Address for Overnight Carriers:

221 East 11th Street

Austin, Texas 78701-2410

(512) 475-3991

TRD-201301615

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: April 22, 2013



### Texas Department of Insurance

#### Company Licensing

Application for incorporation in the State of Texas by SOUTHWEST LAND TITLE INSURANCE COMPANY, a domestic title company. The home office is in Austin, Texas.

Application for UNITEDHEALTHCARE INSURANCE COMPANY, a foreign life, accident and/or health company, DBA (doing business as) UNITEDHEALTHCARE COMMUNITY PLAN. The home office is in Hartford, Connecticut.

Application for admission to the State of Texas by AMERICAN PROGRESSIVE LIFE AND HEALTH INSURANCE COMPANY OF NEW YORK, a foreign life, accident and/or health company. The home office is in White Plains, New York.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201301633

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: April 24, 2013



#### Notice of Request for Qualifications for Special Deputy Receivers RFQ-SDR-2013-1

##### Purpose of RFQ

On or after July 1, 2013, the Texas Department of Insurance will issue RFQ-SDR-2013-1 (RFQ) for individuals or legal entities to qualify as "Eligible Applicants", eligible to submit bids to serve as a Special Deputy Receiver for receiverships under Texas Insurance Code Chapter 443. As described in the RFQ, an SDR performs duties assigned by the commissioner of insurance, in his or her capacity as receiver.

##### Application Form

The RFQ and application forms will be published on the TDI website on or after July 1, 2013 at: <http://www.tdi.texas.gov/lorc/sdrcontractadmn.html>. Further information regarding the RFQ will be available on TDI's website at the above address.

##### Approval Process

Applications must meet all requirements of the RFQ. Applications will be reviewed by the commissioner's staff, and evaluated on the basis of the criteria in the RFQ. Once approved, an Eligible Applicant may submit bids in the event that one or more Requests for Proposals for an SDR are issued during the term of the RFQ. All approvals of Eligible Applicants under the RFQ will terminate on the future date specified in the RFQ, unless the term is extended by the commissioner.

##### Rights and Obligations

TDI is not responsible for any costs incurred in responding to this RFQ and reserves the right to accept or reject any or all applications. TDI is under no obligation to award a contract on the basis of the RFQ. TDI reserves the right to issue other RFQs for SDRs, or for any other services in connection with insurance receiverships, at the commissioner's discretion. The issuance of the RFQ does not limit any of the commissioner's rights under the Texas Insurance Code in connection with the selection and appointment of any SDR.

##### Contact Information

Any requests for information should be directed to Lewis Wright, Financial Regulation Division - SDR Process, Texas Department of Insurance, P.O. Box 149104, Mail Code 305-2A, Austin, TX 78714, telephone (512) 322-3463, e-mail [sdrcontracting@tdi.texas.gov](mailto:sdrcontracting@tdi.texas.gov).

TRD-201301622

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: April 23, 2013

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## Texas Lottery Commission

### Instant Game Number 1544 "Veterans Cash"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1544 is "VETERANS CASH". The play style is "key number match".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1544 shall be \$2.00 per Ticket.

#### 1.2 Definitions in Instant Game No. 1544.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: \$2.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000, \$20,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and \$ SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 1544 - 1.2D

PLAY SYMBOL	CAPTION
\$2.00	TWOS
\$5.00	FIVES
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$20,000	20 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
\$	WINALL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the

Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1544), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1544-0000001-001.

K. Pack - A Pack of "VETERANS CASH" Instant Game Tickets contains 125 Tickets, Packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "VETERANS CASH" Instant Game No. 1544 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "VETERANS CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either of the WINNING NUMBER Play Symbols, the player wins the PRIZE for that number. If a player reveals a "\$" Play Symbol, the player WINS ALL 10 PRIZES! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to ten (10) times.

D. No duplicate non-winning YOUR NUMBERS on a Ticket.

E. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

F. Non-winning Tickets will not contain more than two identical Prize Symbols.

G. No duplicate WINNING NUMBERS Play Symbols will appear on a Ticket.

H. The "\$" Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

I. The "\$" Play Symbol will automatically win all 10 prizes on a Ticket and will win as per the prize structure.

J. The "\$" Play Symbol will never appear more than once on a Ticket.

K. 19. The "\$" Play Symbol will never appear on a non-winning Ticket.

L. On Tickets winning with the "\$" Play Symbol, no YOUR NUMBERS Play Symbols will match either of the WINNING NUMBERS Play Symbols.

M. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and \$5, 10 and \$10, 20 and \$20).

### 2.3 Procedure for Claiming Prizes.

A. To claim a "VETERANS CASH" Instant Game prize of \$2.00, \$5.00, \$10.00, \$20.00, \$30.00, \$50.00 or \$100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$30.00, \$50.00 or \$100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "VETERANS CASH" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "VETERANS CASH" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "VETERANS CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "VETERANS CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1544. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1544 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	688,000	8.72
\$5	336,000	17.86
\$10	248,000	24.19
\$20	64,000	93.75
\$30	11,000	545.45
\$50	4,800	1,250.00
\$100	2,375	2,526.32
\$1,000	16	375,000.00
\$20,000	8	750,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.43. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1544 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1544, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301612

Bob Biard

General Counsel

Texas Lottery Commission

Filed: April 22, 2013



## North Central Texas Council of Governments

Request for Proposals for the Collin County Outer Loop Segment 3a

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is requesting consultant services to assist with preparing a local environmental document for the Collin County Outer Loop Bypass Segment 3a. NCTCOG is supporting the Collin County Toll Road Authority (CCTRA) in developing the Collin County Outer Loop. As part of this effort, NCTCOG is assisting CCTRA in preparing a local environmental document for the purposes of purchasing right-of-way and constructing frontage roads and/or main lanes for Segment 3a of the Collin County Outer Loop from the Dallas North Tollway (DNT) to east of SH 289 (Preston Road). The project requires historical properties and archeological surveys per the Antiquities Code of Texas and a mollusk survey.

### Due Date

Proposals must be received no later than 5:00 p.m., on Friday, May 31, 2013, by Sandy Wesch, P.E., AICP, Project Engineer, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at [www.nctcog.org/rfp](http://www.nctcog.org/rfp) by the close of business on Friday, May 3, 2013. NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

### Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the RFP. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201301627

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: April 23, 2013

## Public Utility Commission of Texas

### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 19, 2013, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc. d/b/a Suddenlink Communications for an Amendment to Its State-Issued Certificate of Franchise Authority, Project Number 41405.

The requested amendment is to expand the service area footprint to include the municipalities of Burkburnett, Electra, Hamlin, and Rotan, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41405.

TRD-201301626

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 23, 2013

### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 22, 2013, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of AT&T Texas for an Amendment to Its State-Issued Certificate of Franchise Authority, Project Number 41406.

The requested amendment is to expand the service area footprint to include the municipality of Texas City, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin,

Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41406.

TRD-201301637

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 24, 2013

### Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 17, 2013, for a service provider certificate of operating authority (SPCOA) pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Matrix Telecom, Inc. d/b/a Excel Telecommunications for a Service Provider Certificate of Operating Authority, Docket Number 41392.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant intends to provide telecommunications services within the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than May 10, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 41392.

TRD-201301570

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 18, 2013

### Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 17, 2013, for a service provider certificate of operating authority (SPCOA) pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Matrix Telecom, Inc. d/b/a VarTec Telecom for a Service Provider Certificate of Operating Authority, Docket Number 41393.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant intends to provide telecommunications services within the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than May 10, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commis-

sion at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 41393.

TRD-201301571  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 18, 2013



#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on April 9, 2013, pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.158 (Vernon 2007 and Supp. 2012).

Docket Style and Number: Application of NRG Texas Gregory LLC Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 41363.

The Application: NRG Texas Gregory LLC (Applicant) has filed an application for approval of the proposed purchase by Applicant of all of the general and limited partnership interests of Gregory Power Partners, L.P., which owns a gas-fired cogeneration facility located within the Electric Reliability Council of Texas (ERCOT) power region in Gregory, Texas (Gregory Power Station) (Proposed Purchase). Upon the consummation of the Proposed Purchase, the Applicant will own a 100% interest in the Gregory Power Station (approximately 387 MW of summer net dependable capability rating). The Applicant is required to obtain commission approval before closing the Proposed Purchase. Under PURA §39.154, a power generation company may not own or control more than 20% of the installed generation capacity located in, or capable of delivering electricity to, a power region in Texas. Applicant has stated that the Proposed Purchase will not result in a violation of the installed capacity share limitations set forth in PURA §39.154.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline to intervene in this proceeding is May 25, 2013. All correspondence should refer to Docket Number 41363.

TRD-201301644  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 24, 2013



#### Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On April 17, 2013, CommCentral, Inc. d/b/a CommCentral (applicant) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Number 60474. Applicant seeks to relinquish the certificate. Applicant stated that it is no longer providing service in Texas.

The Application: Application of CommCentral, Inc. d/b/a CommCentral to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 41391.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than May 10, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 41391.

TRD-201301569  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 18, 2013



#### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 17, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Lipan Telephone Company to Implement a Minor Rate Change Pursuant to Substantive Rule §26.171, Tariff Control Number 41394.

The Application: On April 17, 2013, Lipan Telephone Company (Lipan Telephone or applicant) filed an application for revisions to its local exchange tariff to increase the monthly residential local exchange access line rates in the Bluff Dale and Lipan Exchanges. Lipan Telephone proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by the applicant is \$40,512 in gross annual intrastate revenues. The applicant has 1,281 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 24, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 25, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41394.

TRD-201301572  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 18, 2013



#### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 18, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of West Plains Telecommunications, Inc. to Implement a Minor Rate Change Pursuant to Substantive Rule §26.171, Tariff Control Number 41397.

The Application: On April 18, 2013, West Plains Telecommunications, Inc. (West Plains or applicant) filed an application for revisions to its local exchange tariff to increase the monthly residential rates in the Muleshoe and the Sudan Exchanges. West Plains proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by the applicant is \$44,369 in gross annual intrastate revenues. The applicant has 3,697 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 24, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 24, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41397.

TRD-201301610

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 22, 2013



#### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 22, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Alenco Communications, Inc. d/b/a ACI to Implement a Minor Rate Change Pursuant to Substantive Rule §26.171, Tariff Control Number 41407.

The Application: On April 22, 2013, Alenco Communications, Inc. d/b/a ACI (ACI or Applicant) filed an application for revisions to its Local Exchange Tariff to increase the monthly residential Local Exchange Access Line rates in all its exchanges. ACI is also requesting to remove the optional Extended Area Service offered to both Business and Residential customers in the Dolores, Modeana and West Marietta Exchanges and replace this offering with a mandatory Toll-Free Expanded Local Calling Scope that will allow customers to make local calls to (956-NXX) exchanges in Laredo and customers in the Donie Exchange to make local calls to exchanges in Mexia and Groesbeck. In addition, ACI is also requesting to increase the business rates in the Alexander and Carlton Exchanges for the Rotary Hunting Service to equalize rates with the Maryneal, McCaulley and Sylvester Exchanges. ACI proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by the Applicant is \$36,060 or 1.42% in gross annual intrastate revenues. The Applicant has 1,682 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2013, the application will be docketed.

The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 31, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41407.

TRD-201301636

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 24, 2013



#### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 22, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of XIT Rural Telephone Cooperative, Inc. to Implement a Minor Rate Change Pursuant to Substantive Rule §26.171, Tariff Control Number 41408.

The Application: On April 22, 2013, XIT Rural Telephone Cooperative, Inc. (XIT or Applicant) filed an application for revisions to its Local Exchange Tariff to bundle the current monthly Local Exchange Access Line Rate for residential and business customers with the Tone Dialing Service. XIT is also proposing to make minor text changes to remove the 2-Party and 4-Party Line rate from the Texline Exchange. XIT proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by the Applicant is \$60.00 or 0.0% in gross annual intrastate revenues. The Applicant has 1,023 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 31, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41408.

TRD-201301634

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 24, 2013



#### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 22, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of West Texas Rural Telephone Cooperative, Inc. to Implement a Minor Rate Change Pursuant to Substantive Rule §26.171, Tariff Control Number 41409.

The Application: On April 22, 2013, West Texas Rural Telephone Cooperative, Inc. (West Texas or Applicant) filed an application for revisions to its Local Exchange Tariff to bundle the current monthly Local Exchange Access Line Rate for residential and business customers with the Tone Dialing Service. West Texas is also proposing to increase the Return Check Charge. West Texas proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by the Applicant is \$21,232 or 1.29% in gross annual intrastate revenues. The Applicant has 1,697 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by June 5, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by June 5, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41409.

TRD-201301635

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 24, 2013



## Texas Department of Transportation

### Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Brenham, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Brenham Municipal Airport during the course of the next five years through multiple grants.

**Current Project:** City of Brenham. TxDOT CSJ No.: 13HGBRENM. Scope: Provide engineering/design services to:

1. construct 10-Unit T-Hangar
2. construct North T-Hangar Access Taxiway
3. construct South Hangar Access Taxiway
4. widen H-A-T
5. relocate Cross Taxiway

### 6. construct new vault

The DBE goal for the current project is 6 percent. The TxDOT Project Manager is Stephanie Kleiber.

Future scope work items for engineering/design services within the next five years may include the following: rehabilitate and mark Runway 16-34; rehabilitate aprons; expand apron; rehabilitate taxiways; and rehabilitate run-up pads for Runways 16 and 34.

The City of Brenham reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

[www.txdot.gov/inside-txdot/division/aviation/projects.html](http://www.txdot.gov/inside-txdot/division/aviation/projects.html) by selecting "Brenham Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PI-LOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

[www.txdot.gov/inside-txdot/division/aviation/projects.html](http://www.txdot.gov/inside-txdot/division/aviation/projects.html). The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

### Please note:

**SEVEN** completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than May 30, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

[www.txdot.gov/inside-txdot/division/aviation/projects.html](http://www.txdot.gov/inside-txdot/division/aviation/projects.html) under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the



top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Stephanie Kleiber, Project Manager.

TRD-201301620

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 23, 2013



#### Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Moore County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Moore County Airport during the course of the next five years through multiple grants.

**Current Project:** Moore County. TxDOT CSJ No.: 13HGMOORE.  
**Scope:** Provide engineering/design services to:

1. Construct hangar apron and access taxiway
2. Construct County owned hangar

The DBE/HUB goal for the current project is 4 percent. TxDOT Project Manager is Stephanie Kleiber, P.E.

Future scope work items for engineering/design services within the next five years may include the following: strengthen middle section of parallel taxiway to RW 1-19; rehabilitate/reconstruct west and north hangar access taxiway; construct new terminal building; construct/expand terminal area apron for new terminal building and rehabilitate RW 14-32 and partial parallel taxiway.

Moore County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

[www.txdot.gov/inside-txdot/division/aviation/projects.html](http://www.txdot.gov/inside-txdot/division/aviation/projects.html) by selecting "Moore County Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

[www.txdot.gov/inside-txdot/division/aviation/projects.html](http://www.txdot.gov/inside-txdot/division/aviation/projects.html). The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template.

The AVN-550 consists of eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

#### Please note:

**Seven** completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than May 28, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

[www.txdot.gov/inside-txdot/division/aviation/projects.html](http://www.txdot.gov/inside-txdot/division/aviation/projects.html) under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Stephanie Kleiber, Project Manager.

TRD-201301649

Jack Ingram

Associate General Counsel

Texas Department of Transportation

Filed: April 24, 2013



#### Notice of Availability - Loop 375 Border Highway West Extension Project

The Texas Department of Transportation department is announcing the availability of the Abbreviated State Final Environmental Impact Statement (FEIS) dated April 2013 for the proposed construction of the Loop 375 Border Highway West Extension Project, from Racetrack Drive (near Doniphan Road and New Mexico (NM) 273, west of downtown El Paso) to United States (US) 54 (east of downtown El Paso), a total length of approximately nine miles, of which approximately seven miles would be tolled.

The department has prepared an Abbreviated State FEIS which responds to comments on the State Draft EIS made by participating and cooperating agencies and from the public. Additionally, the Abbreviated State FEIS makes changes to Alternative 2, the Preferred Alternative (referred to as the Revised Preferred Alternative), that address input received during the public hearing held on November 15, 2012.

The Revised Preferred Alternative is a combination of Reasonable Alternatives Rail Yard B and Border A presented in the State Draft EIS. As a result of the public comments, design changes were made to the alternative, to continue access to NM 273 on the western terminus, to improve access to the downtown area, to reduce impacts in the vicinity of Coles Street near the eastern terminus, and to reduce impacts from the various proposed drainage ponds. Approximately 144.93 acres of right-of-way (ROW) would be needed, including 38.06 acres for 13 drainage ponds, 0.20 acre of ROW from the Chihuahueta Park, and 4.68 acres of temporary construction easements. The department's approval of the Abbreviated State FEIS constitutes acceptance of the Revised Preferred Alternative. The department will review any comments submitted concerning the Abbreviated State FEIS. The department may then issue a record of decision which would complete the department's environmental review of the project.

You may review and copy the State Draft EIS and the Abbreviated State FEIS at the following locations:

- (1) Texas Department of Transportation, Environmental Affairs Division, 118 E. Riverside Drive, Austin, Texas 78701;
- (2) Texas Department of Transportation, El Paso District Office, 13301 Gateway Blvd. West, El Paso, Texas 79928;
- (3) Clardy Fox Branch Library, 5515 Robert Alva Rd., El Paso, Texas 79905;
- (4) Memorial Park Branch Library, 3200 Copper Dr., El Paso, Texas 79930;
- (5) Armijo Branch Library, 620 East 7th Ave., El Paso, Texas 79901; and
- (6) Main Library, 501 N. Oregon St., El Paso, Texas 79901.

The State Draft EIS and Abbreviated State FEIS may also be downloaded from the department's El Paso District project website:

[http://www.txdot.gov/project\\_information/projects/el\\_paso/border\\_highway\\_west.htm](http://www.txdot.gov/project_information/projects/el_paso/border_highway_west.htm).

To request that a copy of the State Draft EIS and Abbreviated State FEIS be made at the requestor's expense, please contact Eduardo Calvo, Advance Planning Director, 13301 Gateway Blvd. West, El Paso, Texas 79928 or call (915) 790-4200.

You may submit comments concerning the Abbreviated State FEIS at the following address: Loop 375 BHW Comments c/o HNTB Corporation, 7500 Viscount Blvd., Suite 100, El Paso, Texas 79925. You may submit comments by email at [info@borderhighwaywest.com](mailto:info@borderhighwaywest.com). Any comments must be submitted no later than June 3, 2013.

TRD-201301648

Jack Ingram

Associate General Counsel

Texas Department of Transportation

Filed: April 24, 2013



#### Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Thursday, May 23, 2013 at 10:00 a.m. at 200 East Riverside Drive, Room 1A-2, in Austin, Texas to receive public comments on the May 2013 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2013-2016.

The STIP reflects the federally funded transportation projects in the FY 2013-2016 Transportation Improvement Programs (TIPs) for each

Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed May 2013 Quarterly Revisions to the FY 2013-2016 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5033, and on the department's website at:

<http://www.txdot.gov/government/programs/stips.html>

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Wednesday, May 22, 2013, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive, Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed May 2013 Quarterly Revisions to the FY 2013-2016 STIP to Marc Williams, P.E., Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, June 3, 2013.

TRD-201301568

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 18, 2013



#### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Texas Administrative Code, Title 43, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

[www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings](http://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings).

Or visit [www.txdot.gov](http://www.txdot.gov), How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PI-LOT.

TRD-201301646

Jack Ingram

Associate General Counsel

Texas Department of Transportation

Filed: April 24, 2013



### Request for Qualifications - State Highway 288

Pursuant to the authority granted under Transportation Code, Chapter 223 (enabling legislation), the Texas Department of Transportation (department) may enter into public-private partnership agreements, also known as comprehensive development agreements, for the design, development, construction, financing, maintenance, and operation of a toll project on the state highway system. The enabling legislation authorizes private involvement in toll projects and provides a process for the department to solicit proposals for such projects. Transportation Code, §223.203 prescribes requirements for issuance of a request for qualifications and requires the department to publish a notice in the *Texas Register* if the department decides to issue a request for qualifications for a project. The Texas Transportation Commission (commission) has promulgated rules located at Title 43, Texas Administrative Code, §§27.1 - 27.10 (the rules), governing the submission and processing of qualifications submittals, and providing for publication of notice that the department is requesting qualifications submittals, and setting forth the basic criteria for professional experience, technical competence, and capability to complete a proposed project, and such other information the department considers relevant or necessary in the request for qualifications. The commission has authorized the issuance of a request for qualifications to develop, design, construct, finance, operate, and maintain tolled lanes, general purpose lanes, and associated facilities, including up to eight direct connectors at Beltway 8, along an approximately 10.3 mile portion of State Highway (SH) 288 from US Route 59 to the Harris County line at Clear Creek in Harris County (project), through a public-private partnership agreement (P3A). The project may also include facilities to connect SH 288 to the Texas Medical Center in Houston, Texas, subject to the enactment of legislation amending the deadline for required environmental approvals related to the project and the receipt of such environmental approvals with respect to such facilities.

On April 26, 2012, in Minute Order 113075, the commission authorized the department to commence the procurement process for the project under the enabling legislation. This notice represents the next step in the process.

Through this notice, the department is seeking qualifications submittals (QS) from teams interested in entering into a toll concession P3A in response to a request for qualifications (RFQ). The department intends to evaluate any QS received and may request submission of detailed proposals, potentially leading to negotiation, award, and execution of a P3A. The department will accept for consideration any QS received in accordance with the rules and the RFQ on or before the deadline in this notice. The department anticipates issuing the RFQ, receiving and analyzing the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for detailed proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a P3A for the project.

**RFQ Evaluation Criteria.** QSs will be evaluated by the department for shortlisting purposes using the following general criteria: technical qualifications and capability, statement of technical approach, project finance qualifications and capability, conceptual project financing discussion, and safety qualifications. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

**Release of RFQ and Due Date.** The department currently anticipates that the RFQ will be available on May 3, 2013. Copies of the RFQ will be available at the department's Houston District office located at 7600 Washington Avenue, Houston, Texas 77007 and on the following website:

[www.txdot.gov/inside-txdot/projects/studies/houston/sh288-toll-lanes.html](http://www.txdot.gov/inside-txdot/projects/studies/houston/sh288-toll-lanes.html)

QSs will be due at 12:00 p.m. on August 2, 2013 at the address specified in the RFQ.

TRD-201301647

Jack Ingram

Associate General Counsel

Texas Department of Transportation

Filed: April 24, 2013



### Workforce Solutions Capital Area

#### Public Notice

The Workforce Solutions Capital Area Workforce Board is soliciting applications from training providers under the Workforce Investment Act (WIA) Eligible Training Provider System. All training must be related to Board-approved targeted occupations. Information regarding targeted occupations, minimum performance levels, eligibility criteria, and the application process can be found at [www.wfscapitalarea.com](http://www.wfscapitalarea.com).

For information and assistance, contact Sandra Valenzuela at (512) 597-7100 or email [sandra.valenzuela@wfscapitalarea.com](mailto:sandra.valenzuela@wfscapitalarea.com). Applications are accepted at all times. Workforce Solutions is an Equal Opportunity Employer/Program.

TRD-201301621

Alan D. Miller

Executive Director

Workforce Solutions Capital Area

Filed: April 23, 2013



### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)